

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CHRISTOPHER W. STONEMAN,
Plaintiff,

vs.

Case No. 4:21-cv-00061-SRB

NORFOLK IRON & METAL
and JAMES J. AJELLO,
Defendants.

VIDEO-RECORDED VIDEOCONFERENCE DEPOSITION OF
NORFOLK IRON & METAL and NIM TRANSPORTATION, LLC,
CORPORATION, Defendants, through its designated
representative, JOSEPH W. SPENCER, a witness, taken
on behalf of the Plaintiff, pursuant to Notice, on
November 12, 2021, before

ELLEN L. STOCK

Registered Merit Reporter Certified in Missouri and
Kansas.

2	4
1 APPEARANCES	1 TABLE OF CONTENTS (Continued)
2 For the Plaintiff:	2 (ph) indicates a phonetic spelling.
3 MR. JAMES T. THOMPSON	3 [sic] indicates the text is as stated.
4 EDELMAN & THOMPSON, LLC	4 Quoted text is as stated by the speaker.
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9	9
10 For the Defendants:	10
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17	17
18 Also present:	18
19 Mr. Richard R. Shoemaker	19
20 Ms. Joey Patterson	20
21	21
22 STIPULATIONS	22
23 It was stipulated and agreed by and between	23
24 counsel and the witness that there is no objection	24
25 to the deposition officer administering a binding	25
3	5
1 TABLE OF CONTENTS	1 (The deposition commenced at 11:43 a.m.)
2 EXAMINATION	2 THE VIDEOGRAPHER: We are now on the
3 Questions By Mr. Thompson 5	3 record. Today's date is 11 -- November 12, 2021,
4 Questions By Mr. Lester 88	4 and the time is 11:43. This is the video-recorded
5 Questions By Mr. Thompson 94	5 deposition of Joseph Spencer in the matter of
6 Questions By Mr. Lester 95	6 Christopher Stoneman versus NIM Transportation, LLC,
7	7 Case No. is 4:21-cv-00061 in the United States
8 EXHIBITS	8 District Court for the Western District of Missouri
9 1 - Deposition notice 62	9 at Kansas City.
10 2 - Defendants' document production 67	10 Will counsel please identify themselves
11 4 - NIM Drivers Manual 83	11 and the parties they represent for the record.
12 5 - Training materials 20	12 MR. THOMPSON: James Thompson on behalf of
13 7 - "Internal Emails," accidents reports, and 23	13 the plaintiff, Christopher Stoneman.
14 other attachments	14 MR. LESTER: Michael Lester on behalf of
15	15 defendants, James Ajello and NIM Transportation,
16 CERTIFICATE OF REPORTER 97	16 LLC, and nonparty Norfolk Iron & Metal is producing
17 ERRATA SHEET 98	17 Joe Spencer as a corporate representative today.
18 SIGNATURE PAGE 99	18 THE VIDEOGRAPHER: And will the court
19	19 reporter please swear in the witness.
20 Reporter's Note: Electronic exhibits provided by	20 JOSEPH W. SPENCER,
21 counsel were made OCR searchable (PDF), downsampled	21 a witness, being first duly sworn, testified under
22 to 600 dpi, digitally labeled if not previously	22 oath as follows:
23 labeled, flattened, archived as original exhibits,	23 EXAMINATION
24 and provided electronically to all ordering counsel.	24 BY MR. THOMPSON:
25 Processing electronic exhibits can change the file	25 Q. Mr. Spencer, good morning, my name's James

<p style="text-align: right;">6</p> <p>1 Thompson, and I have the privilege of representing 2 Christopher Stoneman in this matter. Do you 3 understand that you have been designated by Norfolk 4 Iron & Metal to respond to various areas of inquiry 5 for Norfolk Iron & Metal and NIM Transportation? 6 A. I do. 7 Q. Have you ever had your deposition taken 8 before, sir? 9 A. I have not. 10 Q. Have you been present during any of the 11 prior depositions today? 12 A. I was here for just the tail end of Jeff's 13 and most of Joey's. 14 Q. Okay. Well, just for the record, I'll -- 15 I'll go quickly over some of the guidelines. 16 Obviously, continue to give a full audible 17 response rather than a nod of the head. You and I 18 might know what your intention was in your response, 19 but we need a clean record so the court reporter can 20 take down your words. So if you'd continue to do 21 that, I would appreciate that. 22 A. Yes, sir. 23 Q. Also, most importantly, if you don't 24 understand a question I've asked you, let me know 25 you don't understand it, it may be because it's just</p>	<p style="text-align: right;">8</p> <p>1 that's all cleared up today. Fair? 2 A. Fair. 3 Q. Okay. Also, we won't keep you a great 4 deal of time today, but if at any time you need to 5 take a break, just let me know you need a break. If 6 there's a question pending, you need to answer that 7 question, and then we'll take a break immediately 8 thereafter. Okay? 9 A. Okay. 10 Q. Also, as you can tell how this process 11 goes, Mr. Lester may have some objections. He has 12 an obligation to his client to object to things that 13 he believes the question is not framed appropriately 14 or is missing some of its elements. That's not 15 telling you not to answer, that's saying for the 16 court to look at, the judge to look at, at a later 17 point in time and determine whether the question was 18 appropriate or not. So when he -- after he's fully 19 stated his objection, you can go ahead and answer. 20 Do you understand that? 21 A. I do. 22 Q. That's a long-winded way of saying his 23 objection is not telling you not to answer, it's 24 putting something on the record he believes he needs 25 to. Okay?</p>
<p style="text-align: right;">7</p> <p>1 an inarticulate question, I ask a lot of those, and 2 I apologize up front for them, but I need to know 3 that you don't understand a question so that I have 4 an opportunity to rephrase it in a way that you will 5 understand. 6 So if you don't understand a question or 7 think you haven't heard a question correctly, or 8 maybe the video feed catches and we miss part -- you 9 miss part of the question, will you let me know? 10 A. I will. 11 Q. If you go ahead and answer the question, 12 can I assume, and the folks on the jury here in 13 Kansas City assume, that you understood the question 14 and answered it truthfully and to the best of your 15 recollection? 16 A. You can. 17 Q. And just to be fair to you, you understand 18 that if -- when this case goes to trial, if your 19 testimony were different at trial than it is today, 20 I would have an opportunity and an obligation to 21 point those differences out to a jury? 22 And I just don't want to be in a situation 23 where you say, "Well, when you took my deposition on 24 November 12, Mr. Thompson, I didn't really 25 understand that question." So we need to make sure</p>	<p style="text-align: right;">9</p> <p>1 A. Okay. 2 Q. Mr. Spencer, could you go ahead and state 3 your full name for the record, please. 4 A. It's Joseph William Spencer. 5 Q. And, Mr. Spencer, where do you currently 6 live? 7 A. Emporia, Kansas. 8 Q. And what is your address in Emporia, 9 Kansas? 10 A. For work or home? 11 Q. Home. 12 A. 2011 Belmont Drive. 13 Q. And are you currently employed? 14 A. I am. 15 Q. And where are you currently employed? 16 A. Norfolk Iron & Metal, Emporia, Kansas. 17 Q. And what is your current position with 18 Norfolk Iron & Metal in Emporia, Kansas? 19 A. Safety and ISO coordinator. 20 Q. Can you tell me what your current job 21 duties entail in terms of a generalized job 22 description for safety and ISO coordinator? 23 A. The primary functions of my position are 24 managing new hire and cross-training of employees in 25 the Norfolk Iron & Metal facility, and training</p>

<p style="text-align: right;">10</p> <p>1 within NIM Transportation, accident investigation, 2 any safety duties related to both of those, and then 3 managing the ISO quality system. 4 Q. And have those job duties -- or strike 5 that. 6 Let me ask you this: When did you go to 7 work for Norfolk Iron & Metal? 8 A. April of 2007. 9 Q. And can you just give me a thumbnail 10 sketch of your -- your job duties and your job 11 titles from April of 2007 until you became safety 12 and ISO coordinator? 13 A. I came to Norfolk as a loader, which was a 14 warehouse employee who loaded steel onto trucks or 15 on trailers the drivers were going to take out. I 16 went from that to most warehouse positions, 17 ultimately ending as an assistant supervisor of a -- 18 of a shift, and then moved into this position in, I 19 believe, 2008, maybe 2009. 20 Q. Okay. From 2009 to today, have your 21 duties as safety and ISO coordinator remained 22 primary the same? 23 A. They have. 24 Q. So you understand that we're -- one of the 25 things we're going to be talking about today is an</p>	<p style="text-align: right;">12</p> <p>1 A. Not -- no. OSHA certificates related to 2 the job that I'm in now that I've obtained here. 3 Past that, no. 4 Q. Have you -- I assume you have OSHA 10 5 training? 6 A. OSHA 10, OSHA 30, some specialized 7 training. 8 Q. What about training in -- with regards to 9 the Federal Motor Carrier Safety Administration's 10 regulations? 11 A. The training in the FMCSA regulations has 12 been on the job. 13 Q. Do you currently have a CDL? 14 A. I do not. 15 Q. Have you ever had a CDL? 16 A. I have not. 17 Q. Have you ever gone to any Federal Motor 18 Carrier Safety administration regulation seminars or 19 topics? 20 In other words, I understand you -- you 21 gain a body of knowledge simply by doing your job 22 every day, and perhaps reviewing the Federal Motor 23 Carrier Safety administration's regulations. Have 24 you ever gone to any formalized training outside of 25 Norfolk or NIM?</p>
<p style="text-align: right;">11</p> <p>1 accident that took place back in 2018, July of 2018. 2 If that accident had happened in 2012, your 3 involvement would have likely been very similar; is 4 that fair? 5 A. Yes. 6 MR. THOMPSON: And, Michael, what areas of 7 inquiry is Mr. Spencer being designated today? 8 MR. LESTER: On the NIM -- on behalf of 9 NIM Transportation, its topics, subject to the 10 objections that we've agreed to limit any scope 11 issues to for today, 6, 7, 8, 9, 10, 12, 13, 14, 15, 12 16, 17, 18, 19, 32, 42, 51, 52, 53, 58, 62, 63, 64, 13 71. And then there's -- on behalf of Norfolk Iron & 14 Metal, I think two of those are identical. So he's 15 cross-identified. 16 Q. (By Mr. Thompson) Okay. Mr. Spencer, can 17 you give me some general understanding of your 18 educational background, your formal educational 19 background? 20 A. Some college; did not graduate. 21 Q. Okay. Did -- was there a particular field 22 of study that you pursued in college? 23 A. General studies. 24 Q. Okay. Any vocational training or 25 certificates that you have?</p>	<p style="text-align: right;">13</p> <p>1 A. Not formal training that was specific to 2 the FMCSA. There have been conferences and breakout 3 sessions related to that occasionally along the way, 4 most of my training came from the driver supervisor, 5 the drivers, corporate representatives, on the job 6 within NIM. 7 Q. Do you have a understanding of the 8 training that was -- that Mr. Ajello received from 9 NIM or Norfolk? 10 A. Mr. Ajello began his career with Norfolk 11 Iron, NIM Transportation several years before I came 12 to the company, and I cannot speak to what the 13 training consisted of before -- before I was here. 14 Q. What training -- 15 Let me ask you this: Are you aware of any 16 training that Mr. Ajello received from 2009 when 17 you -- and I think I'm right. Is that the right 18 date for you becoming a safety and ISO coordinator? 19 A. I believe it was. 20 Q. Okay. So in 2 -- from 2009 on, would you 21 be responsible for training drivers to the extent -- 22 extent such training took place out of the Emporia 23 facility? 24 A. Yes, sir. 25 Q. Okay. And that would be new hires as well</p>

<p style="text-align: right;">14</p> <p>1 as existing hires?</p> <p>2 A. I would have my part of that training,</p> <p>3 yes.</p> <p>4 Q. Okay. With respect to new hires from 2009</p> <p>5 on, what responsibilities would you have as it</p> <p>6 relates to training?</p> <p>7 A. When a new driver starts with NIM</p> <p>8 Transportation, there are a series of steps the new</p> <p>9 driver goes through before they're allowed to work</p> <p>10 on their own, one of those steps is meeting with me</p> <p>11 where I cover the objectives of the safety and loss</p> <p>12 prevention program, typical types of accidents</p> <p>13 that -- that can happen, our policies, our</p> <p>14 procedures, our recommendations and rules of thumb</p> <p>15 to avoid those.</p> <p>16 When I'm finished with the -- with my part</p> <p>17 of the new driver training, they spend some time</p> <p>18 with the driver supervisor, and he'll have a list</p> <p>19 similar to mine, but it will be more logistic. It</p> <p>20 would be here's how you handle a cash on delivery,</p> <p>21 here's how you use the -- the computer in the truck.</p> <p>22 They spend a day on the warehouse floor to</p> <p>23 understand how the loads go together. They spend a</p> <p>24 self-paced amount of time going through a program</p> <p>25 offered by AdvanceOnline that we pay for for the</p>	<p style="text-align: right;">16</p> <p>1 going to meet with you?</p> <p>2 A. Correct.</p> <p>3 Q. Might meet with the driver supervisor</p> <p>4 first, might meet with you first, but those two</p> <p>5 components are going to take place, and then he's</p> <p>6 going to be -- he or she is going to be put out on</p> <p>7 the road with an experienced driver for a period of</p> <p>8 approximately ten days?</p> <p>9 MR. LESTER: Object to form. That</p> <p>10 misstates his testimony.</p> <p>11 Joe, you can answer.</p> <p>12 Q. (By Mr. Thompson) Mr. Spencer, I don't</p> <p>13 want in any way to misstate your testimony. I'm</p> <p>14 just trying to get some clarification here.</p> <p>15 There -- I'm trying to walk through the</p> <p>16 components of what a new hire would go through now.</p> <p>17 Right? Do you understand that?</p> <p>18 A. I do.</p> <p>19 Q. And they would meet with you, and you'd</p> <p>20 explain the expectations, you'd go over</p> <p>21 safety-related topics and issues with them. They</p> <p>22 would also meet with the -- the person who's going</p> <p>23 to be their driver supervisor; correct?</p> <p>24 A. Correct.</p> <p>25 Q. And after those two functions are</p>
<p style="text-align: right;">15</p> <p>1 driver to receive specific training in different</p> <p>2 areas.</p> <p>3 And when those things are accomplished,</p> <p>4 which that could be anywhere between two to three</p> <p>5 days to even a week or so, after that the driver</p> <p>6 starts with a driver trainer and typically spends</p> <p>7 ten days minimum on the road with the driver</p> <p>8 trainer.</p> <p>9 Once the trainer, the supervisor -- driver</p> <p>10 supervisor and myself agree, then we sign the new</p> <p>11 trainee off, and we let him start driving on his</p> <p>12 own.</p> <p>13 Q. Let's break that down if we can just a</p> <p>14 little bit. My understanding is kind of the first</p> <p>15 step is an interaction and meeting with you; is that</p> <p>16 correct?</p> <p>17 A. Not always. That -- that is a part of the</p> <p>18 training the driver would go through, the new driver</p> <p>19 would go through before -- typically before going</p> <p>20 out with a driver trainer. As to who goes first</p> <p>21 between the driver supervisor or myself, it's --</p> <p>22 it's scheduling.</p> <p>23 Q. Okay. So in terms of interaction, the</p> <p>24 driver -- and this is not in any particular order --</p> <p>25 is going to meet with the driver supervisor and is</p>	<p style="text-align: right;">17</p> <p>1 accomplished, they are going to be put on the road</p> <p>2 with an experienced driver to assist them in</p> <p>3 learning what they need to. That -- that person can</p> <p>4 also assess the safety of those drivers and</p> <p>5 basically sign off on them when they feel they are</p> <p>6 ready to be on their own.</p> <p>7 The bottom line is there's a period of on</p> <p>8 the road, real-life, real-world driving experience</p> <p>9 for about ten days, maybe a little more, maybe a</p> <p>10 little less depending on the driver; right?</p> <p>11 MR. LESTER: I'm just going to object to</p> <p>12 form. I think that still misstates his testimony</p> <p>13 and doesn't include everything he said.</p> <p>14 But, Joe, you can -- you can answer.</p> <p>15 A. I believe what Mr. Lester is referring to</p> <p>16 would be the amount of time the new driver spends</p> <p>17 training online through the modules that we have</p> <p>18 them go through.</p> <p>19 Q. (By Mr. Thompson) Okay. And is that --</p> <p>20 that's done before they go out for that ten-day</p> <p>21 period?</p> <p>22 A. It is. With new drivers that have been</p> <p>23 coming in since 2009.</p> <p>24 Q. Okay. So new drivers that are coming in</p> <p>25 since 2009, when -- when you're talking about the</p>

<p style="text-align: right;">18</p> <p>1 modules, is that what you were referring to when you 2 were saying kind of at their own pace, sometimes it 3 takes two or three days, sometimes a week, but 4 you're letting them work through at their own pace 5 these modules so that they have time to make sure 6 they can absorb the information? 7 A. That is correct. 8 Q. Okay. So we've got meeting with you, 9 meeting with the driver supervisor, a self-paced 10 extensive computer-based modular training, and then 11 approximately ten days on the road? 12 A. Correct. 13 Q. And at that point -- and I'm sure that if 14 there are any issues that arise during any of those 15 portions, you may give some additional training or 16 some additional counseling, but the bottom line is 17 that's a generalized picture of what a new driver 18 since 2009 would go through to get to the point 19 where they can be on the road by themselves; fair? 20 A. That is fair. 21 Q. Okay. Now, do you know how drivers 22 were -- strike that. 23 That is the format since 2009 when you 24 took on your position; right? 25 A. Approximately, yes.</p>	<p style="text-align: right;">20</p> <p>1 produced, and I absolutely cannot say which ones for 2 sure. It was a very large file. There were a lot 3 of documents, but I have looked through that, yes. 4 Q. Okay. Let's see if we can try to sort 5 some things out. So there was a group of documents 6 running from -- it looks like Bates stamped 740, 516 7 pages running through Bates Stamp 1254 that are in a 8 category of documents produced called training 9 documents. Are you familiar with those? 10 A. Not by that description, no. 11 Q. Okay. Let me put some up then. Okay. 12 MR. THOMPSON: Can we pull up Exhibit 5. 13 Q. (By Mr. Thompson) So, Mr. Spencer, this 14 is the grouping I'm talking about, and obviously the 15 first page of the exhibit doesn't give you any 16 information. If we go to page 2. Are you 17 familiar -- do you recognize this document? 18 A. I do. 19 Q. Where is that document out of? 20 A. That document is a part of a printed 21 out -- it was screenshots from the AdvanceOnline 22 training that were printed out back in '08, '09, 23 2010, in that general ballpark, approximately the 24 time that all the drivers that were already here 25 went through that training.</p>
<p style="text-align: right;">19</p> <p>1 Q. Okay. Do you know -- and we know that 2 Mr. Ajello's hire predates 2009; correct? 3 A. It does. 4 Q. So do you know what training he would have 5 received? 6 A. When we adopted using AdvanceOnline to 7 train each of the modules for new drivers, we had 8 all existing drivers complete the course 9 successfully, so we pulled Mr. Ajello off the road, 10 brought him into the -- the office and had him 11 complete each one of those sections also. 12 Q. And have you reviewed any documents in 13 preparation for your testimony today? 14 A. I've spoke with Mr. Lester and I -- 15 Q. I don't -- I don't mean to interrupt you. 16 I don't want to know what you've talked to 17 Mr. Lester about. I'm not entitled to know that. 18 I'm just -- 19 For instance, I'm about to go through some 20 documents that have been produced. They appear to 21 be training documents. Some of them appear to be 22 perhaps screen captures of computer module training. 23 Are you familiar with the documents that have been 24 produced in this case that relate to training? 25 A. I have seen the documents that were</p>	<p style="text-align: right;">21</p> <p>1 And these were printed out at that time, 2 and they were found in the driver supervisor's 3 office by myself, and we -- we provided these to 4 Mr. Lester, and this is a part of that. 5 Q. Okay. What -- are you aware of any 6 document that -- that substantiates that Mr. Ajello 7 received this training? 8 A. My understanding is that each module's 9 completion results in a certificate of completion. 10 Q. And have you reviewed any certificates 11 that would substantiate Mr. Ajello going through any 12 of this training? 13 A. I cannot say for sure whether I saw those 14 recently. I would have seen those at the time that 15 Jim took these -- these classes. 16 Q. Well, those are something that should be 17 in his driver qualification file; correct? 18 A. Not -- not necessarily. I -- I don't know 19 whether those are in Jim's DQ file or not. 20 MR. LESTER: James, just to short-circuit 21 it and maybe make it easier, because I think Rich is 22 more qualified to talk about the DQ file next. But 23 the certificates for AdvanceOnline for Jim Ajello 24 are Defendants 110 through Defendants 126 -- 25 MR. THOMPSON: Right.</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">22</p> <p>1 MR. LESTER: -- are his certificates of 2 completion. 3 MR. THOMPSON: Yep. 4 Q. (By Mr. Thompson) Have you reviewed the 5 DQ file of Mr. Ajello? 6 A. I have not reviewed all of the DQ file. 7 I've reviewed parts of it. 8 Q. Do you -- when you talk to drivers, do you 9 discuss with them the importance of space 10 management? 11 A. We do. 12 Q. Explain to me, for a commercial motor 13 vehicle operator, the importance of space 14 management? 15 A. What I train -- what my part of the 16 training for new drivers is going to focus on with 17 space management is mostly referenced by the Kansas 18 CDL manual. We talk about our internal guideline of 19 6 to 8 inches -- I'm sorry, wow. Six to 20 eight seconds of following distance under normal 21 conditions and up to 10 inches -- or 10 seconds in 22 adverse weather conditions as our rule of thumb we 23 like our drivers to go by. 24 We do also discuss flow of traffic, which 25 is referenced in the Kansas CDL manual, as the safe</p>	<p style="text-align: right;">24</p> <p>1 attaching the police report; right? 2 A. That looks like it has the police report 3 and the internal investigation, both of those should 4 be attached to that email. 5 Q. Okay. So if we go to page 3, that's the 6 first page of the police report; right? 7 A. It looks like it, yes. 8 Q. And you understand the importance of 9 proper accident investigation; right? 10 A. I do. 11 Q. When a NIM Transportation driver is 12 involved in an accident, you want to make sure 13 that -- you want to find out if there's any 14 preventability issues there, if there's some 15 counseling that the driver should get, that 16 hopefully doesn't make it a reoccurrence occur. 17 There's -- from the standpoint of proper safety 18 management controls, under the Federal Motor Carrier 19 Safety administration's regulations, you understand 20 the importance of accident investigation; right? 21 MR. LESTER: Object to form. 22 You can answer, Joe. 23 A. The internal investigations are completed 24 with the goal in mind of preventing recurrence. 25 They are used as training tools.</p>
<p style="text-align: right;">23</p> <p>1 way to travel through urban and congested traffic. 2 We discuss the difference between the two. We focus 3 on knowing the lane that you're going to need to be 4 in and how to make arrangements to get there safely. 5 Q. And with -- with respect to Mr. Ajello and 6 this accident, there was a finding that he failed to 7 follow company guidelines on space management; 8 correct? 9 A. No, that isn't correct. 10 Q. That's not correct? 11 A. Right. 12 Q. Okay. Were you part of the investigation 13 of this accident? 14 A. I was. 15 Q. Okay. 16 MR. THOMPSON: Let's pull up, if we can, 17 we'll just jump around a little bit here, Exhibit 7. 18 And go to page 2 of Exhibit 7. 19 Q. (By Mr. Thompson) Are you familiar with 20 this document, Mr. Spencer? 21 A. That looks like an email that I would have 22 sent to the transportation accident incident 23 notification email distribution group in 2018 24 following the investigation into Jim's accident. 25 Q. It looks like what you're doing is you're</p>	<p style="text-align: right;">25</p> <p>1 Q. (By Mr. Thompson) You would agree -- 2 A. I would -- I'm sorry, go ahead. 3 Q. No. I didn't mean to interrupt you, sir. 4 I thought you may have been done with your answer. 5 Go ahead. 6 A. No. That -- that's all. 7 Q. Oh, okay. My question is a little 8 different. You'd agree that internal accident 9 investigation and a preventability analysis is part 10 of having proper safety management controls in 11 place; right? 12 A. Could you rephrase and repeat the 13 question? 14 Q. Sure. Do you have an understanding of 15 what is meant by "safety management controls" under 16 the Federal -- 17 A. I do. 18 Q. -- Motor Carrier Safety regulations? 19 A. Yes, sir. 20 Q. What does that mean? 21 A. Has recognition and an attempt to keep an 22 accident from occurring. 23 Q. Anything else that's encompassed in a 24 company's safety management controls? 25 MR. LESTER: Object to form.</p>

7 (Pages 22 to 25)

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<p style="text-align: right;">26</p> <p>1 Joe, you can answer.</p> <p>2 A. I do not know what you're looking for.</p> <p>3 Q. (By Mr. Thompson) Okay. You understand</p> <p>4 that safety management controls is a word of art</p> <p>5 defined in the Federal Motor Carrier Safety</p> <p>6 Administration's regulations. Do you understand</p> <p>7 that?</p> <p>8 A. Define "word of art."</p> <p>9 Q. A word of art is, in this context, a</p> <p>10 specific word or words, "safety management</p> <p>11 controls," that have a specific definition within</p> <p>12 the Federal Motor Carrier Safety Administration's</p> <p>13 regulations. Do you have a familiarity with what</p> <p>14 that term means?</p> <p>15 A. I do not.</p> <p>16 Q. Okay. But from a practical standpoint,</p> <p>17 regardless of your understanding of the regs, you</p> <p>18 understand the importance of an internal</p> <p>19 investigation and a preventability analysis as a</p> <p>20 learning and teaching tool to try to prevent</p> <p>21 occurrences from occurring again; right?</p> <p>22 A. I have always seen accident</p> <p>23 investigations -- I think the -- the key words</p> <p>24 you're using there that I'm going to kind of cling</p> <p>25 to are going to be a teaching tool, a way to prevent</p>	<p style="text-align: right;">28</p> <p>1 is in some circumstances not just appropriate but</p> <p>2 expected.</p> <p>3 Q. And -- and depending on the driving</p> <p>4 conditions, you may have to actually increase that</p> <p>5 following distance; right?</p> <p>6 A. In adverse weather conditions, yes.</p> <p>7 Q. Yeah.</p> <p>8 A. When possible.</p> <p>9 Q. And a following distance of six to</p> <p>10 eight seconds affords the driver an opportunity to</p> <p>11 respond to, for instance, vehicles entering their</p> <p>12 lane; right?</p> <p>13 A. That's a -- that's a almost unanswerable</p> <p>14 question the way that it's being asked.</p> <p>15 Q. What -- is there a -- what difficulty are</p> <p>16 you having with the question? I'll try to -- I'll</p> <p>17 try to address it and ask it in a different fashion.</p> <p>18 A. I think it has a very narrow focus.</p> <p>19 The -- I guess I've got to draw the difference</p> <p>20 between whether we're talking about driving in</p> <p>21 between Emporia, Kansas, and Ottawa on I-35 at</p> <p>22 2:00 o'clock on a Sunday afternoon where six to</p> <p>23 eight seconds is absolutely expected under normal</p> <p>24 conditions, ten seconds in adverse conditions.</p> <p>25 In a rural highway, that's more than</p>
<p style="text-align: right;">27</p> <p>1 it from happening again. There is a difference</p> <p>2 between what we're doing here and what an internal</p> <p>3 investigation would include.</p> <p>4 In Mr. Ajello's case specifically, a</p> <p>5 relatively minor and noninjury accident, there was</p> <p>6 no cross-examination, there was no trip to the</p> <p>7 scene. There was what was seen as an opportunity to</p> <p>8 discuss our rule of thumb of a six- to eight-second</p> <p>9 following distance, that way we could discuss the</p> <p>10 accident with other drivers and hopefully take</p> <p>11 something away from it.</p> <p>12 Q. How many feet per second does a commercial</p> <p>13 motor vehicle travel if it's going 60 miles an hour?</p> <p>14 A. I couldn't give you that number, sir.</p> <p>15 Q. How about 45 miles an hour?</p> <p>16 MR. LESTER: Object to the form.</p> <p>17 A. Can't give you the -- I'm not going to be</p> <p>18 able to give you a specific number of feet traveled</p> <p>19 by a vehicle.</p> <p>20 Q. (By Mr. Thompson) But you understand for</p> <p>21 proper safe -- space management, at least the</p> <p>22 company, after being in business for a period of</p> <p>23 time, believes that a six- to eight-second following</p> <p>24 distance is appropriate; right?</p> <p>25 A. A six- to eight-second following distance</p>	<p style="text-align: right;">29</p> <p>1 possible. In urban downtown traffic in the middle</p> <p>2 of Kansas City, anyone who's ever driven that has</p> <p>3 got to understand that that's not a possibility in</p> <p>4 any way, shape, or form, and that a driver</p> <p>5 attempting to merge left and attempting to give a</p> <p>6 six- to eight-second following distance would become</p> <p>7 a hazard to the drivers behind him, and, therefore,</p> <p>8 no, that is not NIM Transportation's expectation of</p> <p>9 our driver.</p> <p>10 Q. Was Mr. Ajello counseled on following</p> <p>11 distance and the company's policy after this</p> <p>12 accident?</p> <p>13 A. There was a conversation with Jim.</p> <p>14 MR. THOMPSON: If we can go to page 13 of</p> <p>15 Exhibit 7. Which is Defendants 1277.</p> <p>16 Q. (By Mr. Thompson) Do you know who filled</p> <p>17 out this "Norfolk Iron & Metal Company Accident</p> <p>18 Invest -- Incident Investigation"?</p> <p>19 A. Mr. Thompson, I confess the older I get,</p> <p>20 it is a little bit difficult to see. Can you --</p> <p>21 Q. No problem.</p> <p>22 A. -- (inaudible) the image a little bit.</p> <p>23 Q. Yeah, we'll -- I have the same problem; so</p> <p>24 if the videographer could expand on it.</p> <p>25 A. That -- that is the final investigation of</p>

<p style="text-align: right;">30</p> <p>1 Jim's accident. This is the form that I would have 2 been a part of filling out. 3 Q. Well, the verbiage or the -- the narrative 4 that's in -- on the following page, 1278, is that -- 5 did you fill that out? 6 A. Same thing. Can we expand it a little 7 bit, please. 8 That is Jim, the driver that we're 9 discussing, the driver supervisor, and myself. That 10 would have been a probably -- I can't say for sure, 11 but it probably would have been -- I probably would 12 have been the one that typed that, I think. 13 Q. And your signature appears on the bottom 14 of page 1278? 15 A. It should, yes. 16 Q. Safety coordinator director's signature, 17 that's you; right? 18 A. Correct. 19 Q. And then Charlie Cheek, is he still 20 employed by the company? 21 A. He is. 22 Q. And he was the manager for that facility? 23 A. A driver supervisor, yes, sir. 24 Q. Okay. And if we go back to 1277, 25 "Indicate all of the following that contributed to</p>	<p style="text-align: right;">32</p> <p>1 Q. Well, it's also a tool to counsel the 2 driver that was involved in the actual accident; 3 right? 4 A. That is not the case, no. 5 Q. No? So your intent here is not in any 6 way, shape, or form to help Mr. Ajello perhaps 7 become a safer driver, that's not important to 8 you -- 9 MR. LESTER: Object to form. 10 Q. (By Mr. Thompson) -- is that right? 11 MR. LESTER: Argumentative. 12 A. We believe that Mr. Ajello is an 13 exceptionally safe driver with 30 years of 14 experience over the road, more than a million miles. 15 Q. (By Mr. Thompson) Have you read 16 Mr. Ajello's deposition? 17 A. I have. 18 Q. Did you find his description of how he 19 deals with space management to be consistent with 20 the Kansas commercial driver's license manual and 21 the safety training that he was purportedly 22 provided? Did you see -- 23 MR. LESTER: Object to -- 24 Q. (By Mr. Thompson) Did you see anything 25 that seemed a little out of place in terms of his</p>
<p style="text-align: right;">31</p> <p>1 the accident or incident." Do you see that? 2 A. You've got to blow this thing up a little 3 bit, guys. 4 MR. THOMPSON: We need to go -- bring it 5 down -- there you go. 6 A. It appears that we checked "Failure to 7 follow prescribed policies and procedures." 8 Q. (By Mr. Thompson) Right. And it -- 9 it's -- and that's in the -- you have a list of 10 things you could check off there; right? 11 A. There is. 12 Q. And you can even put "other." And you 13 want this to be accurate, don't you? 14 A. Absolutely. 15 Q. You're not just making stuff up; right? 16 A. No. 17 Q. I mean, if something's going to be an 18 effective teaching tool, it needs to be accurate, at 19 least from the company's perspective of how 20 preventability can be taught and hopefully learned 21 from as a teaching tool; right? 22 A. If a incident involving one of our drivers 23 had occurred that we felt that we could teach the 24 other drivers from, this is the tool we would use to 25 teach those drivers.</p>	<p style="text-align: right;">33</p> <p>1 understanding of -- of space management? 2 MR. LESTER: I object to form. It's vague 3 and ambiguous. Calls for speculation. 4 Joe, you can answer if you know. 5 A. Mr. Ajello referred to how many feet per 6 second he needed to be behind a -- another vehicle. 7 Mr. Ajello also said that he was traveling at 8 45 miles an hour with his foot on the brake as he's 9 preparing to go left on 610, and that he can see the 10 vehicles in front of him. 11 He also says that he saw the driver 12 approaching on his right-hand side. With his foot 13 on the brake, intentionally not driving so slow as 14 to become a hazard to the cars behind him, and 15 leaving space in between himself and the cars in 16 front of him, not the car in the next lane, because 17 that's not what we trained Mr. Jim -- or Jim Ajello 18 to do, I don't feel there is absolutely anything 19 that I personally would have done differently. 20 Q. (By Mr. Thompson) My question -- I move 21 to strike as nonresponsive. That wasn't my 22 question, Mr. Spencer, although I appreciate you 23 trying to provide an answer. 24 Mr. Ajello said that -- since the 25 beginning of his driving, that he uses a rule with</p>

<p style="text-align: right;">34</p> <p>1 regard to space management of 10 feet for every 2 10 miles an hour he's traveling. As -- as someone 3 involved in the training of commercial motor vehicle 4 drivers, do you think that is a safe understanding 5 of space management? 6 MR. LESTER: Object to form. 7 A. It is a possibly simple explanation of 8 that doesn't fit in all circumstances. I would 9 suggest that the Kansas CDL manual, if looking at a 10 vehicle approximately the same size as Jim, is at 11 the speed that he was traveling, I believe it's 2 -- 12 Section 2728, somewhere -- somewhere around the part 13 where it talks about how safe it is to travel at the 14 speed and the flow of traffic, it does give the 15 example specifically that Jim cited. 16 Q. (By Mr. Thompson) Do you believe that 17 that is a safe and good understanding of safe space 18 management technique? 19 MR. LESTER: Object to form. 20 Argumentative. Asked and answered. 21 Q. (By Mr. Thompson) Ten feet for every 22 10 miles an hour you're traveling? 23 MR. LESTER: Object to form. Asked and 24 answered. 25 Joe, you can -- you can --</p>	<p style="text-align: right;">36</p> <p>1 (inaudible) applicable. 2 It's also, the dozens of times that we've 3 had drivers meetings over the last 15 years that 4 I've been here, 13 in this position, excuse me, that 5 urban driving, safe driving, checking mirrors, all 6 of those things have been discussed. 7 So asking the question of is Jim's 8 understanding of how far he should be away from 9 other cars in a safe traveling distance based on 10 this one number, from an interview that you had with 11 him a few months ago, is not a fair question, 12 because Jim has a much bigger understanding of how 13 to drive a semi truck than that. 14 Q. (By Mr. Thompson) And, for instance, 15 based on that high level of understanding and 16 experience, he appreciated and knew that he was 17 coming into a portion of the roadway that 18 historically, almost on a daily basis, had heavy 19 congestion at that time of day; correct? 20 MR. LESTER: Just going to object to form. 21 Joe, to the extent you -- you know what 22 Mr. Ajello testified to, you can answer. 23 A. I believe that's what he said in his 24 deposition. 25 Q. (By Mr. Thompson) Right. I mean, he</p>
<p style="text-align: right;">35</p> <p>1 Q. (By Mr. Thompson) You can answer, 2 Mr. Spencer. 3 MR. LESTER: You can answer again. 4 A. I feel like that given the circumstances 5 Jim was in, his actions were safe. I -- I don't -- 6 I don't know another way to answer your question, 7 sir. 8 Q. (By Mr. Thompson) Sure. I -- and I'm not 9 talking about Mr. Ajello on that day. So I'm not 10 asking you to critique, as part of the answer to the 11 question, his actions that day. 12 I'm asking you, as a commercial motor 13 vehicle driver, do you believe his understanding of 14 10 feet for every 10 miles an hour he's traveling in 15 terms of space management is a safe understanding of 16 space management? 17 MR. LESTER: Object to form. 18 Q. (By Mr. Thompson) Just generally, do you 19 believe that's a safe understanding of it? 20 MR. LESTER: Asked and answered. 21 Joe, you can answer again. 22 A. Again, I don't feel that's necessarily a 23 fair question. It isn't only what Jim learned in 24 high school, as he stated in his deposition, but 25 it's also the six to eight that Norfolk's asking for</p>	<p style="text-align: right;">37</p> <p>1 expect -- it wasn't new to him or a surprise to him 2 that there was going to be slowing traffic, stopped 3 traffic, or congested traffic at that juncture; 4 right? 5 A. Correct. 6 Q. And that's what you -- you -- you were 7 talking about, his -- his body of knowledge as a 8 commercial motor vehicle operator, that's the type 9 of thing that you use when you know there's a 10 situation where you have congested traffic, where 11 you can have people moving from lane to lane, you 12 want to adjust your driving to address the safety 13 concerns associated with that type of environment; 14 right? 15 A. In the position that he was in, attempting 16 to keep as much space in between him and the 17 automobiles in front of him in his lane, without 18 creating a hazard to the cars behind him, is exactly 19 what should have been done. 20 Q. And why would slowing down any further 21 create a hazard? He said he was going 45; right? 22 A. I believe that's what he said in his 23 deposition. 24 Q. And he knows that there's congested and -- 25 and potentially stopped traffic ahead of him; right?</p>

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<p style="text-align: right;">38</p> <p>1 A. I don't believe he said that, no. 2 Q. Oh, okay. You don't believe he said that. 3 A. Not that I remember. 4 Q. Okay. In any event, back on your form, 5 you listed failure to follow prescribed policies and 6 procedures as the item that -- that contributed to 7 the accident; isn't that true? 8 A. That is what we listed, yes. 9 Q. And that's based on your professional 10 understanding after what you believed was a thorough 11 investigation of the accident; right? 12 MR. LESTER: Object to form. 13 Argumentative. 14 You can answer, Joe. 15 A. Again, Mr. Thompson, it is a significantly 16 different thing to do an internal accident 17 investigation over a 5-mile-an-hour fender bender. 18 There was no trip to the scene. There was no 19 cross-examination. We used that opportunity to 20 attempt to open a dialogue and discuss traveling 21 distance with our drivers, yes, that's what we did. 22 Q. (By Mr. Thompson) And in this situation, 23 you -- I mean, you felt you did as complete an 24 investigation as you needed to to basically reach a 25 conclusion of what contributed to the accident;</p>	<p style="text-align: right;">40</p> <p>1 Q. But the bottom line is regardless of how 2 complex an investigation is, you don't get to a 3 point where you attribute causation issues or what 4 contributed to it unless you have obtained the 5 information you feel you need to -- to reach that 6 conclusion; right? 7 MR. LESTER: Object to form. Calls for 8 speculation. 9 But you -- you can answer. 10 A. I'm -- I'm -- I'm going to try to word it 11 a different way. We -- in dealing with a minor 12 accident, we took what we could from that accident 13 to create a training tool for the other drivers 14 without -- admittedly without investing the time to 15 go to the scene, without investing the time to -- a 16 scene investigation would have probably been the -- 17 I don't know, I'm trying to think of what else we 18 would have done here. 19 You've got Jim, that we absolutely called 20 in. We had a conversation with the guy that we have 21 had working for us for a very long time, that we 22 know does a good job and takes his job very 23 seriously, and that was a key part of our 24 investigation, the conversation with Jim. 25 At the end of the day, Jim felt very</p>
<p style="text-align: right;">39</p> <p>1 right? 2 MR. LESTER: Object to form. 3 You can answer. 4 A. I -- I think I have a couple of times. 5 I'm not sure how -- how else you would like to hear 6 the answer, sir, with no disrespect, but I -- I feel 7 like you're asking the same thing over and over. 8 Q. (By Mr. Thompson) Well, I feel like you 9 aren't answering the question, with no disrespect. 10 So my question is do you -- let's just 11 walk through it. Do you take -- when you -- you 12 have a preliminary investigation or preliminary 13 report of an accident; right? 14 A. Yes, sir. 15 Q. And then there's a process where you 16 collect information, necessary information to -- to 17 get to a point where you can do a final accident -- 18 a final accident, an incident investigation report; 19 right? 20 A. That's right. 21 Q. Now, sometimes that accident may involve 22 going to the scene, it may involve interview with 23 numerous people. It may be more involved than your 24 investigation here was; right? 25 A. Yes, sir.</p>	<p style="text-align: right;">41</p> <p>1 strongly, how the events played out, that this was 2 directly caused by Mr. Stoneman. 3 Q. (By Mr. Thompson) Well, that's not what 4 the police thought, is it? 5 A. The police report did -- did come later. 6 Q. Well, but you -- 7 A. -- I believe. 8 Q. You had the police report when you did 9 this final accident report; right? 10 A. I believe that's right, yes. 11 Q. Yeah, and so the -- the police were on the 12 scene, weren't they? 13 A. I believe so, yes. 14 Q. And -- well, you don't always have to take 15 the word of law enforcement. That's certainly an 16 important data point in terms of their 17 interpretation of what caused the accident; right? 18 A. It is. 19 Q. I mean, you wanted the police report prior 20 to completing your investigation; right? 21 A. We did. 22 Q. And you understand that there can be two 23 sides to every story about how an accident occurs; 24 right? 25 A. I would -- I would assume so, yes.</p>

<p style="text-align: right;">42</p> <p>1 Q. Okay. Did you ever talk to Mr. Stoneman?</p> <p>2 A. That, I did not, no.</p> <p>3 Q. And you refer to a 5-mile-an-hour fender</p> <p>4 bender. Have you seen the damage to your vehicle?</p> <p>5 A. I have.</p> <p>6 Q. Do you think that's a 5-mile-an-hour</p> <p>7 impact?</p> <p>8 A. I do.</p> <p>9 Q. Okay. You have some other accidents that</p> <p>10 are 5-mile-an-hour impacts that look like that?</p> <p>11 A. I think that the damage to Jim's truck, in</p> <p>12 my opinion, is consistent with slamming on your</p> <p>13 brakes when you're cut off, the way the truck lifts</p> <p>14 up, the damage to the -- the front of the hood, the</p> <p>15 radiator, it is absolutely consistent with a</p> <p>16 5-mile-an-hour crash, yes.</p> <p>17 Q. What other crashes have you investigated</p> <p>18 at 5 miles an hour?</p> <p>19 MR. LESTER: Object to form.</p> <p>20 A. I -- I can't think of a specific case</p> <p>21 right now to give you, but I can -- I can say that</p> <p>22 over the time that I've been doing the job that I'm</p> <p>23 in now, there have been many investigations for lots</p> <p>24 of different things.</p> <p>25 Q. (By Mr. Thompson) Well, have your trucks</p>	<p style="text-align: right;">44</p> <p>1 accident reconstruction?</p> <p>2 For instance, there's the Northwestern</p> <p>3 Traffic Institute at Northwestern University in</p> <p>4 Chicago. They teach accident reconstruction to law</p> <p>5 enforcement, to many people who go there for a week</p> <p>6 or two weeks or even a month. Do you have any such</p> <p>7 formalized training in accident reconstruction?</p> <p>8 A. No, sir.</p> <p>9 Q. Now, do you understand whether there were</p> <p>10 any modules or ECM modules on that truck that may</p> <p>11 have had information that would be relevant to your</p> <p>12 investigation?</p> <p>13 A. I -- I can't say for sure.</p> <p>14 Q. Fair. And when you say you can't say for</p> <p>15 sure there may be a few reasons, so I'm going to ask</p> <p>16 some follow-up.</p> <p>17 Do you know if that truck had a module on</p> <p>18 it that would provide any data as to such things as</p> <p>19 vehicle speed, braking, acceleration, throttle,</p> <p>20 rpms, any of that?</p> <p>21 A. The truck should have been equipped with</p> <p>22 PeopleNet, which was an electronic logs system at</p> <p>23 the time.</p> <p>24 Q. Okay. And did you request any information</p> <p>25 from PeopleNet?</p>
<p style="text-align: right;">43</p> <p>1 gotten in a lot of accidents since 2009?</p> <p>2 A. Absolutely not.</p> <p>3 Q. So I'm just trying to find out what your</p> <p>4 knowledge base, when you say that the damage to this</p> <p>5 vehicle looks like a 5-mile-an-hour collision, I'm</p> <p>6 just trying to find out where that knowledge base</p> <p>7 is. Do you understand?</p> <p>8 A. I -- I do.</p> <p>9 Q. And so I'm trying to find out -- I mean, I</p> <p>10 didn't think you guys crash every day. I'm not</p> <p>11 being facetious. I mean, how many 5-mile-an-hour</p> <p>12 crashes have you investigated and have a knowledge</p> <p>13 base as to what that particular type of vehicle</p> <p>14 would look like in a 5-mile-an-hour crash?</p> <p>15 MR. LESTER: Object to form. Object to</p> <p>16 the preamble. The question's argumentative. It's</p> <p>17 outside the scope of his testimony as a corporate</p> <p>18 representative.</p> <p>19 But, Joe, you can answer.</p> <p>20 A. I -- I already have. I can't tell you a</p> <p>21 specific case that I can remember investigating a</p> <p>22 5-mile-an-hour crash.</p> <p>23 Q. (By Mr. Thompson) Okay. And I'm not,</p> <p>24 again, trying to be difficult, but I need to run</p> <p>25 this to ground. Do you have any experience in</p>	<p style="text-align: right;">45</p> <p>1 A. I did not.</p> <p>2 Q. Okay. And you understand that PeopleNet,</p> <p>3 depending on the equipment on a particular vehicle,</p> <p>4 through GPS, may have some information with respect</p> <p>5 to vehicle speed? Are you aware of that?</p> <p>6 MR. LESTER: James, I'm fine with you</p> <p>7 asking the question, and I'll let Joe answer it.</p> <p>8 But I'll just say Rich, who is coming up next, is</p> <p>9 the corporate representative who is going to be able</p> <p>10 to talk about these precise PeopleNet logs that were</p> <p>11 on board at the time and what they entailed, so --</p> <p>12 MR. THOMPSON: Okay.</p> <p>13 MR. LESTER: -- Joe can answer to his</p> <p>14 personal knowledge, but there will be a corporate</p> <p>15 rep on the topic when we're done.</p> <p>16 A. Mr. Thompson, I -- I honestly don't know.</p> <p>17 Q. (By Mr. Thompson) Okay. So as part of</p> <p>18 any accident investigation, not just this accident,</p> <p>19 but any other accident that you've investigated</p> <p>20 since 2009, have you ever used PeopleNet to provide</p> <p>21 some information or data that may shed light or</p> <p>22 provide additional data points in your</p> <p>23 investigation?</p> <p>24 A. I believe that I've never requested</p> <p>25 information from PeopleNet myself, and if it ever</p>

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<p style="text-align: right;">46</p> <p>1 has been used, it was provided by the folks at 2 corporate. 3 Q. Do you recall it ever being provided by 4 the folks at corporate? 5 A. I can't say for sure. I don't know. 6 Q. Okay. Other than PeopleNet, are you aware 7 of any modules through the engine manufacturer that 8 would provide data points for an accident? 9 MR. LESTER: And I'm just going to -- same 10 objection as earlier. Joe can obviously answer to 11 his personal knowledge, but Rich is the corporate 12 representative designated to testify to it. 13 A. I -- I don't know. 14 Q. (By Mr. Thompson) Okay. Have -- I just 15 want to make sure I'm clear. Do you -- as you sit 16 here, do you have any recollection of ever getting 17 engine module data as part of an investigation you 18 were doing for Norfolk Iron? 19 A. I -- I don't remember that, no. 20 MR. LESTER: And just to be -- well, I'll 21 clear it up later, but that's fine. 22 Q. (By Mr. Thompson) So with respect to the 23 information you had in investigating this accident, 24 you had a statement from Mr. Ajello; right? 25 A. Correct.</p>	<p style="text-align: right;">48</p> <p>1 Mr. Ajello's? 2 A. We're not anywhere close enough for me to 3 be able to see that. We're going to need to go 4 about twice that big. 5 (The videographer complied.) 6 A. I think so. 7 Q. (By Mr. Thompson) And it looks like it 8 was filled out on the day of the accident, that 9 would be consistent with policy; right? 10 A. Correct. 11 Q. And take a moment, if you can, and -- and 12 read his narrative here. 13 (Reviews document.) 14 Q. (By Mr. Thompson) Is it your recollection 15 that that narrative, not perhaps with every specific 16 detail, but the general tenor of that narrative is 17 consistent with his verbal discussions with you 18 about the accident? 19 A. I believe so, to the best of my memory. 20 Q. So you had his version of events. You had 21 the police report. You didn't have any data off the 22 truck, you didn't have any data off the engine, and 23 you never talked to Mr. Stoneman. Is that a -- 24 MR. LESTER: I object -- 25 Q. (By Mr. Thompson) Is that a --</p>
<p style="text-align: right;">47</p> <p>1 Q. And -- and not only a written statement 2 from Mr. Ajello, you had a -- a verbal conversation 3 with him as well; correct? 4 A. That's right. 5 Q. And is it fair to say that his verbal 6 conversation was pretty consistent with his written 7 narrative? 8 A. I don't have the written narrative in 9 front of me. 10 Q. Sure. Let's do that, in fairness to you. 11 I think if we go to page 11 and 12. 12 MR. THOMPSON: So let's bring up, if we 13 could, 11 and 12, and you may have to rotate them. 14 And why don't you go to 12 first and maybe blow it 15 up a little bit for the witness. 16 Q. (By Mr. Thompson) Mr. Spencer, are you 17 familiar with this type of document? 18 A. The type of document, yes. 19 Q. And when is this used and what's it used 20 for? 21 A. This is what we refer to as a driver's 22 kit. This is for the driver to document the events 23 of -- of an incident after they happen. 24 Q. And the handwriting on this particular 25 document, do you believe that to be to Mr. -- be</p>	<p style="text-align: right;">49</p> <p>1 MR. LESTER: Sorry. 2 Q. (By Mr. Thompson) -- fair assessment of 3 the information you did and did not have? 4 MR. LESTER: I object to the form of the 5 question. It's argumentative and it misstates the 6 evidence. 7 A. To the best of my memory. 8 Q. (By Mr. Thompson) Were you part of a 9 decision not to try to follow up and talk to 10 Mr. Stoneman as part of your investigation? 11 A. I -- I was not a part of the decision to 12 or to not talk to Mr. Stoneman. 13 Q. Would that have been someone else's 14 decision? 15 A. I don't know. 16 Q. As part of a preventability analysis -- 17 and strike that. 18 Let me ask you this: Does -- does NIM or 19 Norfolk have a policy when a driver is involved -- a 20 commercial motor vehicle driver is involved in an 21 accident of conducting a preventability analysis of 22 the accident? 23 A. Whenever an accident has occurred, we 24 attempt to figure out the best that we can do to 25 keep it from happening again.</p>

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<p style="text-align: right;">50</p> <p>1 Q. My question is just a little different.</p> <p>2 Do you have a formal policy to conduct a</p> <p>3 preventability analysis as that analysis is</p> <p>4 described in the Federal Motor Carrier Safety</p> <p>5 Administration's regulations?</p> <p>6 A. I can't answer that question.</p> <p>7 Q. And in the narrative on page -- let's see,</p> <p>8 page 14 of Exhibit 7.</p> <p>9 MR. THOMPSON: If you could bring that up.</p> <p>10 Q. (By Mr. Thompson) It says "Jim states</p> <p>11 another vehicle cut in front of him and hit his</p> <p>12 brakes abruptly. Jim was unable to stop and</p> <p>13 rear-ended the other vehicle. Although Jim did not</p> <p>14 receive a citation, the report -- the police report</p> <p>15 lists Jim as driving too fast for the conditions as</p> <p>16 well as following too close to the vehicle he hit."</p> <p>17 Do you see that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Is that your verbiage, your narrative?</p> <p>20 A. Possibly.</p> <p>21 Q. Consistent with the -- with the</p> <p>22 conclusions that were reached here -- right? -- as</p> <p>23 to how the accident -- "How did the accident or</p> <p>24 incident occur? What is the root cause?" And</p> <p>25 that's the narrative that was put in that section;</p>	<p style="text-align: right;">52</p> <p>1 in place for NIM Transportation, and if followed,</p> <p>2 would have prevented this accident."</p> <p>3 Then it says "Six to eight seconds</p> <p>4 following distance will be maintained under normal</p> <p>5 driving conditions. Under adverse driving</p> <p>6 conditions, ten seconds following distance will be</p> <p>7 maintained." Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And, again, you may have written</p> <p>10 that -- right? -- you just don't have a specific</p> <p>11 recollection?</p> <p>12 A. Correct.</p> <p>13 Q. But you would have read it prior to</p> <p>14 signing off on it; right?</p> <p>15 A. Correct.</p> <p>16 Q. And if you didn't agree with anything in</p> <p>17 this form, you could have requested it be changed or</p> <p>18 gotten follow-up; right?</p> <p>19 A. That is also correct.</p> <p>20 Q. And it says "Participating employees</p> <p>21 involved in the investigation." You have</p> <p>22 Mr. Ajello, Mr. Cheek, and yourself; right?</p> <p>23 A. Yes.</p> <p>24 MR. THOMPSON: We've been going, I think,</p> <p>25 about an hour. Why don't we take about a</p>
<p style="text-align: right;">51</p> <p>1 right?</p> <p>2 A. I don't understand what -- what you're</p> <p>3 specifically asking.</p> <p>4 Q. Sure. I apologize. Poor question.</p> <p>5 The -- what that narrative is answering is</p> <p>6 the question how did the accident or incident occur,</p> <p>7 and what is the root cause; correct?</p> <p>8 A. That is what the question is asking, yes.</p> <p>9 Q. And you signed off on that answer; right?</p> <p>10 A. That's my signature at the bottom of the</p> <p>11 page; correct.</p> <p>12 Q. And you wouldn't have signed it if you</p> <p>13 hadn't reviewed it; right?</p> <p>14 A. I'm sure that I wouldn't have.</p> <p>15 Q. Just so the record's clear, you may or may</p> <p>16 not have actually written that narrative, but you</p> <p>17 certainly would have read that narrative before</p> <p>18 signing off on it; right?</p> <p>19 A. Correct.</p> <p>20 Q. And then this gets to your point.</p> <p>21 "Accident reoccurrence prevention. What have we</p> <p>22 done to prevent this from happening again? What</p> <p>23 administrative or engineering controls were put in</p> <p>24 place?"</p> <p>25 And the answer is "The following policy is</p>	<p style="text-align: right;">53</p> <p>1 five-minute break.</p> <p>2 THE VIDEOGRAPHER: Time is 12:49, and we</p> <p>3 are going off the record. Stand by.</p> <p>4 (A recess was taken.)</p> <p>5 THE VIDEOGRAPHER: The time is now 12:59,</p> <p>6 and we are back on the record.</p> <p>7 Q. (By Mr. Thompson) Mr. Spencer, I just</p> <p>8 want to touch -- go back and look at Exhibit 7 again</p> <p>9 and just try to get an understanding of the general</p> <p>10 time frame and the process and procedure that was</p> <p>11 gone through here rather than kind of the</p> <p>12 substantive conclusions.</p> <p>13 So it looks -- if we look at Exhibit --</p> <p>14 page 8 of Exhibit 7, there's what's called a</p> <p>15 "Preliminary Report of Driver Accident." Do you see</p> <p>16 that?</p> <p>17 A. I do.</p> <p>18 MR. LESTER: I think -- we're -- we're</p> <p>19 seeing the police report now, is that what we're</p> <p>20 supposed to see?</p> <p>21 Q. (By Mr. Thompson) I'm sorry, page 9. So</p> <p>22 with the policies and procedures there at NIM and at</p> <p>23 Norfolk, if we're kind of walking through a</p> <p>24 chronology, an accident happens involving a NIM</p> <p>25 commercial motor vehicle driver. That driver has an</p>

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<p style="text-align: right;">54</p> <p>1 accident kit, which includes a number of things. 2 And one of the things is, it allows the driver to 3 fill out a narrative or description of how the 4 accident happened. Right? 5 A. That is correct. 6 Q. And are they supposed to go through that 7 process with the accident kit there at the scene? 8 A. They should complete the accident kit, 9 which is the -- the term we use for the 10 preliminary -- I'm sorry, not the preliminary 11 report, but the witness statement which has the -- I 12 think it was the last one that you had up that has 13 the -- the picture the driver can -- can kind of 14 draw where everybody was at, where he signs it, as 15 soon as possible, that way they -- so it's fresh in 16 their mind. 17 Q. Okay. So are they supposed to do that at 18 the scene, or are they supposed to do it sometime 19 that day, or is it just generically as soon as you 20 can? How are they instructed? 21 A. As soon as possible. 22 Q. Okay. So maybe at the scene, maybe a 23 little while later that day depending on 24 circumstances? 25 A. That's really all we tell them, is just as</p>	<p style="text-align: right;">56</p> <p>1 the top line on the left. 2 Q. (By Mr. Thompson) When you say the time 3 stamp or the date stamp, you're -- are you talking 4 about what appears above "Preliminary Report of 5 Driver Accident," in the upper right it has "James 6 J. Ajello," and then "Ajello 07/16/2018"? 7 A. Yes. Date stamp -- 8 Q. What does that -- 9 A. -- is what I meant. 10 Q. What does that time stamp tell you? 11 A. That tells us when -- when the driver 12 supervisor completed this report. 13 Q. Okay. So sometime on the 16th of July; 14 right? 15 MR. LESTER: (Inaudible.) 16 A. Yes. 17 Q. (By Mr. Thompson) And -- 18 MR. LESTER: (Inaudible) in the way, if 19 that's true, Joe. 20 But could we show him the very bottom, the 21 very last line of that page? I didn't know if 22 that -- I don't know if that changes the answer or 23 not. 24 A. Actually, I don't know why those two would 25 be different. I -- I don't think I've ever seen</p>
<p style="text-align: right;">55</p> <p>1 soon as possible. 2 Q. Okay. And then does that generate -- or 3 strike that. 4 Are they all supposed to -- also supposed 5 to call and report the accident immediately? 6 A. Drivers have been instructed to get ahold 7 of their supervisor as soon as possible if an 8 incident occurs. 9 Q. So that would mean a cell phone call from 10 the scene; right? 11 A. Potentially, yes. 12 Q. Okay. And is that first notification from 13 the driver what generates that preliminary report of 14 driver accident? 15 A. That is correct. 16 Q. And if we go back to page 9 of Exhibit 7. 17 Can you tell when this document was created? And -- 18 and it tells us when this was actually filled out. 19 A. It's -- it's going to need to be blown up 20 again. Apologize to whoever's having to do that for 21 me. 22 (Videographer complied.) 23 A. It looks like 7/16 of 2018. And I'm 24 looking at the -- the time stamp in the header on 25 the right-hand side and the date of the accident on</p>	<p style="text-align: right;">57</p> <p>1 that before. 2 MR. LESTER: I just want to make sure we 3 have a clear record. I'm sorry, James. The witness 4 is back to yours. 5 MR. THOMPSON: Yeah, I'm not -- it's -- 6 it's not a trick question or trying to -- I'm just 7 trying to get the process. 8 Q. (By Mr. Thompson) So at the bottom of the 9 page there's an audit -- it says "Audit stamp 10 created 7/17/2018. Preliminary accident 1.4 11 preliminary report of driver accident reported by 12 Charlie Cheek." 13 A. Correct. 14 Q. What -- what appears at the top of the 15 document, based on your experience, would kind of 16 indicate to you that it was filled out on the 16th, 17 but there's also a -- a notation at the bottom that 18 says audit stamp that was created on 7/17 of 28 -- 19 2018. Do you know what the audit stamp means? 20 A. I've never seen that. I've never noticed 21 that on the form before. I don't know what that is. 22 Q. Okay. The form was probably filled out at 23 least after 7:15 p.m. on the 16th because it 24 includes the fact that -- it includes the fact that 25 Mr. Ajello did go to Newman Hospital for a UA at</p>

<p style="text-align: right;">58</p> <p>1 7:15; right?</p> <p>2 A. I would -- I would assume that also.</p> <p>3 Q. So this is -- this is kind of the starting</p> <p>4 point officially to start deciding what needs to be</p> <p>5 investigated?</p> <p>6 A. Correct. That's the -- the preliminary</p> <p>7 report. That's what the driver supervisor completes</p> <p>8 and starts the process.</p> <p>9 Q. And at this point you don't have the</p> <p>10 police report; right?</p> <p>11 A. No. Correct.</p> <p>12 Q. And -- but this also -- in fairness to you</p> <p>13 guys, this is a preliminary report of a driver</p> <p>14 accident, not the completion of your investigation;</p> <p>15 right?</p> <p>16 A. That's correct.</p> <p>17 Q. And then if we go to page 21, 22, 23, do</p> <p>18 those -- do you know who took those photographs?</p> <p>19 A. I don't.</p> <p>20 Q. Do you know when they were taken?</p> <p>21 A. I do not.</p> <p>22 Q. Do you know where they were taken?</p> <p>23 A. I can see another NIM trailer beside that</p> <p>24 truck in the picture. I -- I don't see anything</p> <p>25 else that tells me for sure where.</p>	<p style="text-align: right;">60</p> <p>1 this a test that a driver takes after completing,</p> <p>2 perhaps, one of the modules?</p> <p>3 A. Can we blow it up, please?</p> <p>4 Q. Sure.</p> <p>5 A. I don't know.</p> <p>6 Q. Are you familiar with this document?</p> <p>7 A. I'm not -- I'm not seeing it anymore, it</p> <p>8 disappeared on me. It's gone again.</p> <p>9 MR. LESTER: It's a finicky screen share</p> <p>10 here.</p> <p>11 (Videographer clarification.)</p> <p>12 A. Honestly, Mr. Thompson, I'm -- I'm</p> <p>13 inclined to believe that it's probably a -- a test</p> <p>14 at the end of one of the modules. I've seen those,</p> <p>15 but I don't -- I don't know for sure if this is one</p> <p>16 of them or not. It looks like it probably is.</p> <p>17 Q. (By Mr. Thompson) Let's go, if we could,</p> <p>18 to page 54.</p> <p>19 So these are how these were produced. Do</p> <p>20 you know -- for instance, this document, do you know</p> <p>21 where this document was found?</p> <p>22 A. I don't understand the question.</p> <p>23 Q. Well --</p> <p>24 MR. LESTER: Joe, I'm going to help you</p> <p>25 answer for one second, and I think that will answer</p>
<p style="text-align: right;">59</p> <p>1 Q. Did you review these photos?</p> <p>2 A. I don't remember.</p> <p>3 Q. Did you ever go and look at the truck</p> <p>4 yourself personally?</p> <p>5 A. Possibly, and I don't remember.</p> <p>6 Q. Do you have any reason to believe that</p> <p>7 these photos don't accurately reflect the condition</p> <p>8 of the truck after the accident?</p> <p>9 A. I have no way of -- of knowing that.</p> <p>10 Q. Do you believe you would have had the</p> <p>11 photos at the time you signed off on the</p> <p>12 investigation report?</p> <p>13 A. That long ago, I can't say.</p> <p>14 Q. All right. Let me jump back to training</p> <p>15 for a moment if we could.</p> <p>16 MR. THOMPSON: And pull up Exhibit 5. And</p> <p>17 if we could, go to page 32 of Exhibit 5.</p> <p>18 Q. (By Mr. Thompson) And this says "Driver</p> <p>19 Training Audit." So my question is, is this</p> <p>20 document --</p> <p>21 MR. LESTER: Did -- James --</p> <p>22 Q. (By Mr. Thompson) -- are these --</p> <p>23 MR. LESTER: Sorry.</p> <p>24 Q. (By Mr. Thompson) So if we go back to</p> <p>25 page 31, it looks like this is a sample of a -- is</p>	<p style="text-align: right;">61</p> <p>1 James's questions.</p> <p>2 MR. THOMPSON: Sure.</p> <p>3 MR. LESTER: It's -- he's in the middle of</p> <p>4 the documents that were produced with this</p> <p>5 (indicating).</p> <p>6 THE WITNESS: Right. Okay. Yeah.</p> <p>7 A. Those were in the -- the three-ring binder</p> <p>8 that Mr. Lester just showed us. That was found in</p> <p>9 the driver supervisor's office, and those were</p> <p>10 printed out -- I -- I think it's time stamped at the</p> <p>11 bottom of several of the pages, but it was around</p> <p>12 the same time Jim would have taken those modules.</p> <p>13 Q. (By Mr. Thompson) Yeah, for instance,</p> <p>14 page 58 is time stamped 12/30 of 2009?</p> <p>15 A. That does sound right.</p> <p>16 Q. But these documents aren't unique to Jim</p> <p>17 Ajello; right? They're -- so if we see highlighting</p> <p>18 on them, if we see writing on them, that's not Jim</p> <p>19 Ajello's highlighting or -- or handwriting; right?</p> <p>20 A. I would not have any idea.</p> <p>21 Q. These are -- all of the documents that</p> <p>22 were produced, were produced from a -- or all of</p> <p>23 these training documents came out of a three-ring</p> <p>24 binder in the driver supervisor's office; is that</p> <p>25 right?</p>

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<p style="text-align: right;">62</p> <p>1 A. Correct.</p> <p>2 Q. Okay. So I'm going to go through quickly</p> <p>3 some of these topics in the deposition notice.</p> <p>4 Okay?</p> <p>5 MR. THOMPSON: If we could pull up</p> <p>6 Exhibit 1.</p> <p>7 Q. (By Mr. Thompson) Have you had an</p> <p>8 opportunity to review Exhibit 1, which is a</p> <p>9 deposition notice?</p> <p>10 A. No, I haven't.</p> <p>11 MR. THOMPSON: If we could go to page 3.</p> <p>12 A. Oh, I'm sorry, yes, I have.</p> <p>13 Q. (By Mr. Thompson) Okay. So you've been</p> <p>14 designated -- we're going to walk through these.</p> <p>15 On -- on this page, you have been designated to</p> <p>16 testify as to 6, 7, 8, 9, and 10.</p> <p>17 So "A person or persons knowledgeable</p> <p>18 regarding the informational contents of any and all</p> <p>19 video, audio, electronic, or other media forms of</p> <p>20 training material provided to James Ajello at any</p> <p>21 time during his employment with you."</p> <p>22 MR. LESTER: Obviously, James, as we march</p> <p>23 through these, subject to the objections that we've</p> <p>24 agreed to and limitations, but Joe -- Joe will</p> <p>25 answer your questions.</p>	<p style="text-align: right;">64</p> <p>1 sometimes PowerPoint, sometimes video.</p> <p>2 Q. And do you keep any record of what's</p> <p>3 covered in those meetings?</p> <p>4 A. Not that we could find for this far back.</p> <p>5 Q. Well, so what about in the last five</p> <p>6 years?</p> <p>7 A. Not that I know of. You'll have topics</p> <p>8 (inaudible) --</p> <p>9 Q. Do -- do you have record --</p> <p>10 I didn't mean to interrupt you. I just --</p> <p>11 do you have any documentation for any period prior</p> <p>12 to July of 2018 about any -- any topics covered in</p> <p>13 quarterly driver's meetings?</p> <p>14 A. There isn't any documentation, no.</p> <p>15 Q. How about any documentation of who</p> <p>16 attended those meetings.</p> <p>17 A. That --</p> <p>18 Q. Does the driver have to sign in?</p> <p>19 A. That, I -- I'm going to have to defer to</p> <p>20 Rich. I don't know the answer to that, but I</p> <p>21 believe it's something he can address.</p> <p>22 MR. THOMPSON: To short-circuit this,</p> <p>23 Michael, the documents that you've produced as --</p> <p>24 that are either in the driver qualification file or</p> <p>25 that you've produced as training documents more</p>
<p style="text-align: right;">63</p> <p>1 Q. (By Mr. Thompson) Are you aware of any</p> <p>2 training provided to Mr. Ajello that hasn't been</p> <p>3 produced in this case?</p> <p>4 A. The only thing that I can definitively say</p> <p>5 for sure where Jim was trained would have been at</p> <p>6 the quarterly drivers meetings, which we did not</p> <p>7 have a list of the topics that were covered at</p> <p>8 those, but there's been quite a bit of group</p> <p>9 discussion over the years in those.</p> <p>10 Q. So quarterly driving -- driver's meetings.</p> <p>11 They -- but the name, I assume they take place about</p> <p>12 every three months?</p> <p>13 A. That -- usually, yes. That's the goal.</p> <p>14 Q. Can you explain the format of those</p> <p>15 meetings?</p> <p>16 A. I can. There has been a little bit of --</p> <p>17 usually -- usually there's going to be some</p> <p>18 corporate representation. The guys from Nebraska</p> <p>19 are going to fly down, and we are going then --</p> <p>20 they'll join us for the meeting. It is primarily a</p> <p>21 safety meeting.</p> <p>22 We'll serve either breakfast or lunch to</p> <p>23 the drivers. We'll talk about anything that's</p> <p>24 happened over the last three months that we can</p> <p>25 learn from. There will be a group discussion, use</p>	<p style="text-align: right;">65</p> <p>1 recently, is that the totality of what has -- what's</p> <p>2 available with respect to training for Mr. Ajello?</p> <p>3 MR. LESTER: It's everything I have, and I</p> <p>4 believe it's everything pre-accident. I don't know</p> <p>5 if we've looked for what -- if there's new training</p> <p>6 in the last year. And I think our objection speaks</p> <p>7 to that.</p> <p>8 But with respect to all pre-accident</p> <p>9 documentation of training of Jim Ajello, you have</p> <p>10 everything.</p> <p>11 MR. THOMPSON: Okay.</p> <p>12 MR. LESTER: To our -- to -- to</p> <p>13 defendant's best knowledge and belief.</p> <p>14 Q. (By Mr. Thompson) And if we jump to 13,</p> <p>15 which is on page 4 of the exhibit. Actually, 12,</p> <p>16 13, and 14. Take a moment, if you would,</p> <p>17 Mr. Spencer, and just look at those three</p> <p>18 paragraphs.</p> <p>19 MR. LESTER: Just to be clear, as he reads</p> <p>20 them, there's an objection that we've agreed to</p> <p>21 limit this to -- we're providing Mr. Spencer to</p> <p>22 testify regarding Jim Ajello's training,</p> <p>23 instruction, and monitoring.</p> <p>24 A. Okay. Mr. Thompson, what's the -- what's</p> <p>25 the question on -- on which one are we wanting to</p>

<p style="text-align: right;">66</p> <p>1 start with here?</p> <p>2 Q. (By Mr. Thompson) Sure.</p> <p>3 MR. THOMPSON: And -- and, again, Michael,</p> <p>4 you might be able to short circuit this. With</p> <p>5 respect to documents that would cover any</p> <p>6 pre-accident training that -- to the extent such</p> <p>7 documents exist of Mr. Ajello, they've been</p> <p>8 produced; is that accurate?</p> <p>9 MR. LESTER: Yes. I'll -- Joe, I'll --</p> <p>10 I'll field this one.</p> <p>11 Yes. To defendant's best knowledge and</p> <p>12 belief.</p> <p>13 Q. (By Mr. Thompson) Mr. Spencer, between</p> <p>14 2009 and 2018, what -- what policies or procedures</p> <p>15 were in place to provide refresher training to</p> <p>16 drivers like Mr. Ajello?</p> <p>17 You've -- you've talked about quarterly</p> <p>18 driving -- driver's meetings, that would be one</p> <p>19 aspect of continuing education and training; is that</p> <p>20 fair?</p> <p>21 A. It is.</p> <p>22 Q. As I understand it, back in 2009, when you</p> <p>23 put in place the -- this modular training for new</p> <p>24 drivers in the future, and also brought in all</p> <p>25 existing drivers and ran them through that training,</p>	<p style="text-align: right;">68</p> <p>1 So we know that Mr. Ajello completed that</p> <p>2 module at or around December of 2009; right?</p> <p>3 A. Correct.</p> <p>4 Q. And then the -- the next page, 120 of</p> <p>5 Exhibit 2, there was a module "Best practices for</p> <p>6 CMV drivers: Changing lanes and passing," and that</p> <p>7 also was completed on or about December 18th of</p> <p>8 2009.</p> <p>9 The next page is 121, "Best practices for</p> <p>10 CMV drivers: Curves, turns, and downgrades." That</p> <p>11 also was completed on 12/18 of 2009.</p> <p>12 MR. LESTER: Is there a question, James?</p> <p>13 MR. THOMPSON: No. I'm just ...</p> <p>14 Q. (By Mr. Thompson) You would agree with</p> <p>15 me -- right? -- that -- that that's when that</p> <p>16 certificate indicates it was completed, 12/18 of</p> <p>17 2009; right?</p> <p>18 A. I think that's what it says, yes.</p> <p>19 Q. Do you know how these certificates are</p> <p>20 generated?</p> <p>21 A. They were -- the online course gave the</p> <p>22 driver three attempts to pass the test after</p> <p>23 reviewing a module. So the driver would read.</p> <p>24 There were lab exercises, practice exercises.</p> <p>25 When they were done, they would take the</p>
<p style="text-align: right;">67</p> <p>1 was there -- has there -- strike that.</p> <p>2 The training that Mr. Ajello was provided,</p> <p>3 would there be any training in the five years prior</p> <p>4 to the accident, 2013, involving computer modules?</p> <p>5 I think I -- if I have it here.</p> <p>6 A. Not to the best of my memory.</p> <p>7 Q. So we -- we can jump back maybe to</p> <p>8 Exhibit 2?</p> <p>9 MR. LESTER: Are we supposed to be looking</p> <p>10 at the police report?</p> <p>11 MR. THOMPSON: No. Exhibit -- I'm sorry,</p> <p>12 Exhibit 2. And I'm going to page 119 of Exhibit 2.</p> <p>13 Q. (By Mr. Thompson) So this is what -- when</p> <p>14 you talk about AdvanceOnline Solutions Online</p> <p>15 Institute, and we've looked at that 500-and-some</p> <p>16 pages under training, which was Exhibit 5, much of</p> <p>17 that material is through AdvanceOnline Solutions;</p> <p>18 right?</p> <p>19 A. Correct.</p> <p>20 Q. And so if we look at when this, for</p> <p>21 instance, date of completion, this says 12/18/2009,</p> <p>22 and that kind of lines up -- and that training, for</p> <p>23 instance, is "Best practices for commercial motor</p> <p>24 vehicle drivers: Adverse conditions and emergency</p> <p>25 situations."</p>	<p style="text-align: right;">69</p> <p>1 test, and if they passed the test with a minimum of</p> <p>2 a 70 percent within three tries, then this became a</p> <p>3 printable form that I believe at the time we had the</p> <p>4 router dispatcher and transportation print out,</p> <p>5 collect, and -- and provide to either myself or the</p> <p>6 driver supervisor.</p> <p>7 Q. And then it would be placed in the</p> <p>8 driver's file?</p> <p>9 A. Yes.</p> <p>10 Q. So basically the certificate was generated</p> <p>11 through the program itself. Once completed and the</p> <p>12 driver attained 70 percent, they're given three</p> <p>13 attempts to do it, once they attain it, if they</p> <p>14 attain it, this spits out a certificate; right?</p> <p>15 A. That is correct.</p> <p>16 Q. And so with respect to Mr. Ajello's -- if</p> <p>17 we go back to his certificates.</p> <p>18 MR. THOMPSON: If we go back to page 119,</p> <p>19 we can blow these up. 119 should be the next page.</p> <p>20 I show 119 as certificate of completion for best</p> <p>21 practices. You should be at Defendants 112 --</p> <p>22 one -- there. That's 119 that I have anyway.</p> <p>23 Q. (By Mr. Thompson) So this first one,</p> <p>24 these are all in -- in a row as they were produced.</p> <p>25 So the first one, Mr. Ajello successfully completed</p>

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<p style="text-align: right;">70</p> <p>1 it on December 18, 2009, at 9:01 a.m.; is that 2 right? 3 A. If that's what it says, yes. 4 Q. Okay. And then we go to the next one, and 5 Mr. Ajello, 17 minutes later, completes the next 6 module, "Best practices for CMV drivers: Changing 7 lanes and passing"; right? 8 A. That's what's on the form that we're 9 looking at. 10 Q. And then we have about another 17 minutes, 11 Mr. Ajello completes "Best practices for CMV 12 drivers: Curves, turns, and down grades"; right? 13 A. Yes. 14 Q. And then if we go to the next one, we see 15 that another ten minutes later he completes "Best 16 practices for CMV drivers: Pedestrians and 17 passengers"; right? 18 A. Yes. 19 Q. And then another 12 minutes later, he 20 completes "Best practices for CMV drivers: 21 Right-of-way and intersections"? 22 A. Yes, sir. 23 Q. And these are all on the 18th of December, 24 2009; right? 25 A. Yes, sir.</p>	<p style="text-align: right;">72</p> <p>1 me go back. 2 MR. LESTER: Yeah. What are we looking 3 at? They go through 126. So I don't think you've 4 looked at them all. 5 MR. THOMPSON: I think we've looked at all 6 of the online training. 7 MR. LESTER: Oh, I'm sorry, I apologize. 8 You broke out, so I missed that part of the 9 question. I think I'm -- 10 MR. THOMPSON: No problem. No problem. 11 Q. (By Mr. Thompson) We're -- we're talking 12 about AdvanceOnline Solutions training. Do you 13 believe that we've covered all of the certificates 14 consistent with your testimony that since he was an 15 existing driver, he was brought in and run through 16 the same modules that a new driver would be done -- 17 would be run through; right? 18 A. Can you repeat the question, please? 19 Q. Sure. Have we -- have we gone through all 20 of the training that you believe he would have 21 received by AdvanceOnline Solutions Online Institute 22 at any time while employed at NIM? 23 A. Honestly, I -- I don't know. That 24 seems -- that seems a little light, to be honest. 25 I'm -- I'm working from memory from -- what has this</p>
<p style="text-align: right;">71</p> <p>1 Q. And if we go to page 124, "Best Practices 2 for CMV drivers: Start up, back up, parking 3 procedures." That actually in the -- that's 4 completed at 10:08 a.m. on the 18th; right? 5 A. That is what it says, yes, sir. 6 Q. The next one is "Cargo securement for 7 drivers." That's completed a little over a half 8 hour later -- or about a half hour later at 9 10:41 a.m.; right? 10 A. That -- yes. 11 Q. And then 11 minutes later, he gets "Cargo 12 securement for drivers: Metal coils." 13 MR. LESTER: Is there a question, James? 14 Q. (By Mr. Thompson) And I believe that's 15 all of the AdvanceOnline training certificates that 16 we have. 17 So if there were any other -- if there was 18 any other online solutions training that Mr. Ajello 19 obtained or received while at NIM or Norfolk -- 20 MR. LESTER: What's the -- what's the last 21 Bates number that you -- 22 MR. THOMPSON: Should be -- what's that? 23 MR. LESTER: What's the last Bates number 24 that you have? 25 MR. THOMPSON: The last page number? Let</p>	<p style="text-align: right;">73</p> <p>1 been? 12 years now. I -- I -- I can't say for 2 sure. 3 Q. Did you see any topics with online -- or 4 AdvanceOnline Solutions have covered specifically, 5 at least in their title, space management? 6 A. Not in the title. Not from the ones that 7 you just read, no. 8 Q. And if we look at -- at some of the 9 information that's been produced as part of the 10 training materials in Exhibit 5, there -- there is 11 reference at least into those materials to space 12 management; right? 13 A. Can you repeat the question again? 14 Q. Sure. In the documents that were 15 produced, the documents that were produced as 16 Exhibit 5, training materials, those doc -- which -- 17 which are the documents -- the screenshots of the 18 AdvanceOnline training modules, they do reference 19 space management; correct? 20 A. I -- I -- I'm looking at a page that says 21 "training materials" in front of me. 22 Q. Okay. Let's go to page 470. 23 MR. LESTER: I don't think he's trying to 24 trick you. Just -- does that three-ring binder that 25 we produced reference space management?</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">74</p> <p>1 A. Does the three-ring binder reference space 2 management? I don't -- I don't know the answer to 3 that question, I really don't. 4 Q. (By Mr. Thompson) Well, I'm going to pull 5 up what's been produced as page 470 of Exhibit 5. 6 And it is the Bates stamped document Defendants 7 1208. And if you look at it, "Required Knowledge in 8 Detail. Drivers must know 13 safe vehicle control 9 topics." Do you see that? 10 A. Can we blow it up a little bit, please. 11 Q. Sure. Absolutely. 12 A. And can you repeat the question now that 13 it's blown up? 14 Q. Sure. There's a reference on the page I 15 just referenced to you of "space management"; right? 16 A. Yes, sir. 17 Q. Okay. Do you -- based on you being 18 involved in this training, as you sit there today, 19 do you recall any other AdvanceOnline training 20 literature that specifically explains space 21 management? 22 A. I do not. 23 Q. Okay. And you would -- I think your 24 comment a few moments ago was the amount of online 25 AdvanceOnline training that we see, if -- if that's</p>	<p style="text-align: right;">76</p> <p>1 MR. LESTER: But if you want us to 2 stipulate that the number of AdvanceOnline Solutions 3 is the number of certificates we have, I'm sure -- I 4 imagine that the issue is that there's other 5 certificates in there that aren't from AdvanceOnline 6 Solutions and that's the confusion. 7 MR. THOMPSON: Okay. Well -- well, let's 8 clear up any confusion. 9 Q. (By Mr. Thompson) So AdvanceOnline 10 Solutions, let's walk through them together, and 11 then we'll also include the other ones. 12 So for AdvanceOnline Solutions we have 13 page 119 of Exhibit 2. That's the first one. The 14 second one is page 120. The third one is page 121. 15 The fourth one is page 122. The fifth one is 16 page 123. The sixth one is page 124. The seventh 17 one is page 125. The eighth one is page 126. The 18 ninth one -- well, that's it. There's eight of them 19 for AdvanceOnline. Do you believe there may have 20 been more AdvanceOnline modules? 21 A. No, I -- I don't. I think that's probably 22 right. 23 Q. And then just to be fair, there's some 24 additional certificates. So the -- the first 25 additional certificate, we have to jump back to 117.</p>
<p style="text-align: right;">75</p> <p>1 the extent of it, all done back in December of 2009, 2 that seems a little light to you; right? 3 A. I'm not sure that you're wording it quite 4 the way that I did. I -- I felt that there was more 5 training than that for AdvanceOnline. We listed, it 6 seemed like, six or seven different -- different 7 certifications. I feel like probably ten to 12 was 8 right. If you listed ten to 12, then I do 9 apologize. I was focused more on trying to read the 10 date as that was what the questions were at the 11 time. 12 Q. Well, let's -- let's just walk through 13 them so we're all on the same page. 14 So the first one I have that's been 15 produced is Defendants 112. And that's page -- so 16 we can count them together. That's -- page 119 is 17 the first one, the second is 120, the third is 121, 18 the fourth is 122, the fifth is 123. The sixth -- 19 MR. LESTER: I don't think we're -- 20 we're -- we're not seeing what you're seeing -- 21 THE WITNESS: Yeah. 22 MR. LESTER: -- James, what you're looking 23 at. We're still in Exhibit 5. 24 Q. (By Mr. Thompson) Okay. Let's go to 25 Exhibit --</p>	<p style="text-align: right;">77</p> <p>1 State of Alabama Department of Public Safety. 2 A. That is an AdvanceOnline course also. 3 Q. And this was also completed -- okay. So 4 that's an AdvanceOnline, I see. So we are going to 5 get clarity here. 6 So we should include page 117 as an 7 AdvanceOnline training course; right? 8 A. Correct. 9 Q. And that one was completed the same day, 10 in the same roughly two-hour, 2 1/2-hour period; 11 right? 12 A. I don't remember the times that we were at 13 on the last ones. I know that that -- typically 14 that section, Alabama coil, took most drivers 15 between two and four hours to complete. 16 Q. And it looks like he completed it in an 17 hour and 27 minutes; right? 18 A. It -- it does appear so, yes. 19 Q. I mean, is that your understanding of that 20 reference, Advance -- where it says "time online"? 21 A. Yes, that -- that's how I'm taking that 22 too. 23 Q. And then the next page, 118. That's also 24 the same date, the time stamp and the same time 25 online, one hour 27 minutes and 42 seconds; right?</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">78</p> <p>1 A. I don't see the difference between that 2 form and the last one. 3 Q. Do you know what -- 4 (Reporter clarification.) 5 (Zoom technical difficulties.) 6 (Discussion off the record.) 7 Q. (By Mr. Thompson) (Inaudible) -- looks 8 like pages 117 and 118 are the same certificates; 9 right? 10 MR. LESTER: Did -- was everybody having 11 trouble hearing that? 12 THE WITNESS: Yes. 13 THE REPORTER: Yes. 14 MR. LESTER: James, could you maybe back 15 out and come back in. You've been breaking up a lot 16 the last few questions. 17 MR. THOMPSON: (No response.) 18 THE REPORTER: Now he's frozen for good. 19 MR. LESTER: All right. Let's go off the 20 record then. 21 THE VIDEOGRAPHER: Okay. The time is 22 1:42. We're going off the record. Stand by. 23 (Discussion off the record.) 24 THE VIDEOGRAPHER: The time is 1:51 p.m., 25 and we are back on the record.</p>	<p style="text-align: right;">80</p> <p>1 A. It is. 2 Q. And then if we go to page 130, same day, 3 December 18, 2009, "DOT/TSI driver guide to driving 4 CMVs." And the next one is 131 -- page 131 of 5 Exhibit 2. "DOT/TSI driver's guy to drug and 6 alcohol regulations," also conducted -- or -- or 7 taken on December 18, 2009; right? 8 A. Correct. 9 Q. And then the next one is page 132, 10 "DOT/TSI driver's guide to hours of service," also 11 taken the same day, a little later in the afternoon; 12 right? 13 A. Yes, sir. 14 Q. Exhibit [sic] 133, again AdvanceOnline, 15 certificate says "U.S. Department of Transportation, 16 Transportation Safety Institute Certificate," also 17 completed on December 18, 2009; right? 18 A. It is, yes. 19 Q. Do you believe that with respect to the 20 online training, we've now covered everything that 21 Mr. Ajello received through those programs? 22 A. I would say that is most likely the case, 23 yes. 24 Q. And so he did all that training on 25 December 18th of 2009; correct?</p>
<p style="text-align: right;">79</p> <p>1 Q. (By Mr. Thompson) Mr. Spencer, we're 2 going to try to get you finished up here. I believe 3 that we were talking about Exhibit 2. Page 117 and 4 118 appears to be the same certificate; is that 5 fair? 6 A. They do. Yes, sir, they do appear that 7 way to me too. 8 Q. And then I think at the end of -- if we 9 jump to page 127 of Exhibit 2. Is this an 10 AdvanceOnline program as well? It's done the same 11 date, 12/18 of 2009. A little later in the morning 12 at 11:39 a.m. Do you see that? 13 A. I do. That is a AdvanceOnline certificate 14 also. 15 Q. Okay. And then the -- the same would be 16 true of Exhibit 128 -- or page 128 of Exhibit 2; 17 correct? "DOT/TSI driver guide to CDL 18 requirements"? 19 A. Yes, sir. 20 Q. And that appears to have been undertaken 21 the same day, December 18, 2009; right? 22 A. Yes, sir. 23 Q. And that's through AdvanceOnline as well, 24 even though the certificate says U.S. Department of 25 Transportation; right?</p>	<p style="text-align: right;">81</p> <p>1 A. It does look like it, yes. 2 Q. And that would be 9 1/2 years before the 3 accident; right? 4 A. Correct, yes. 5 Q. The only other training that he would have 6 received would have been these quarterly drivers' 7 meetings where some training and safety issues would 8 be discussed; is that fair? 9 A. That is fair, yes. 10 Q. Okay. And unfortunately we don't have any 11 documentation of the topics covered or anything like 12 that; right? 13 A. We don't have documentation. I have 14 specific memories of several different topics that 15 were discussed, but we don't have any -- 16 Q. What -- what do you recall? 17 A. We've discussed maintaining space. We've 18 discussed urban driving. We've discussed changing 19 lanes. Any lessons learned from any accidents that 20 would have happened in the quarter, and oftentimes 21 corporate-wide, usually not from Emporia drivers. 22 Video review of any accident. Any of the mirror 23 usage. Staying with the flow of traffic. Using 24 common sense. Off the top of my head. 25 Q. Okay. Do any of the trucks running out of</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">82</p> <p>1 Emporia currently have dash cams?</p> <p>2 A. They do.</p> <p>3 Q. Was there a dash cam on the vehicle at the</p> <p>4 time of the July '18 accident?</p> <p>5 A. Unfortunately, no.</p> <p>6 Q. Or the July 16, 2018, accident?</p> <p>7 A. I'm sorry, what was the last question?</p> <p>8 Q. Yeah, I apologize. Was there -- just</p> <p>9 so -- I referenced a date that was unclear. We're</p> <p>10 talking about a July 16, 2018, accident, collision;</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. At the time of this collision,</p> <p>14 Mr. Ajello's vehicle was not equipped with a dash</p> <p>15 cam; is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Are vehicles now equipped with dash cams?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you recall when that change went into</p> <p>20 effect?</p> <p>21 A. I would be giving you a -- an approximate</p> <p>22 guess. That would be pretty close. But I think</p> <p>23 Rich is going to be talking about that later. And</p> <p>24 he -- he will know for sure exactly when, I'm sure.</p> <p>25 Q. Okay. Then if -- take a look at</p>	<p style="text-align: right;">84</p> <p>1 manual together?</p> <p>2 A. I'm -- I'm go -- I'm going to give you a</p> <p>3 guess and say that for parts of it probably, but I</p> <p>4 absolutely couldn't swear to it.</p> <p>5 Q. All right. Let's see. 32 -- I'm just</p> <p>6 running through these numbers. We've already talked</p> <p>7 about 42, which is "A person or persons</p> <p>8 knowledgeable regarding all policies and procedures</p> <p>9 regarding the memorialization of the accident scene</p> <p>10 and driver accident kits." Do you recall that</p> <p>11 discussion, Mr. Spencer?</p> <p>12 A. I do.</p> <p>13 Q. We've already covered 32, "A person or</p> <p>14 persons knowledgeable regarding your policies and/or</p> <p>15 procedures with respect to the investigation and</p> <p>16 determination of preventable or nonpreventable</p> <p>17 accident collisions and property loss or damage</p> <p>18 involving drivers or equipment."</p> <p>19 We've talked about that. You're not aware</p> <p>20 of any formal preventability policy or procedure</p> <p>21 with respect to investigations; true?</p> <p>22 A. I apologize to the group. I've got quite</p> <p>23 a bit of noise happening right outside of the door.</p> <p>24 I'm having a hard time hearing you.</p> <p>25 Q. Sure (inaudible) --</p>
<p style="text-align: right;">83</p> <p>1 Exhibit 1, going back to 16, 17, 18, and 19. These,</p> <p>2 again, are all different ways of asking about driver</p> <p>3 training and documentation provided to Mr. Ajello.</p> <p>4 With -- take a look at 16 and 17 and 18.</p> <p>5 With respect to manuals, I'm going to ask that we</p> <p>6 pull up Exhibit 4. This is an 18-page document.</p> <p>7 Are you familiar with this document?</p> <p>8 A. To an extent.</p> <p>9 Q. Do you believe this document would have</p> <p>10 been provided to Mr. Ajello?</p> <p>11 A. I believe so.</p> <p>12 Q. Are there any prior versions of this</p> <p>13 document? This -- this exhibit has a last revised</p> <p>14 date of 11/10 of 2016. Do you see that?</p> <p>15 A. I don't, but I do believe you. And I</p> <p>16 don't know about previous versions of it.</p> <p>17 Q. It looks like this manual's dated 2013</p> <p>18 with last revision of 11/10/2016.</p> <p>19 MR. LESTER: Is there a question, James?</p> <p>20 Q. (By Mr. Thompson) And just so we're</p> <p>21 clear, do you -- you -- you don't know of any prior</p> <p>22 versions -- or you're not aware of any prior</p> <p>23 versions of the manual prior to 2013; is that right?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Okay. Were you part of putting this</p>	<p style="text-align: right;">85</p> <p>1 THE WITNESS: I don't know what the</p> <p>2 process is, but I'd like to tell these folks to</p> <p>3 quiet down a little bit so I can hear you better.</p> <p>4 Is that an okay thing to do?</p> <p>5 MR. THOMPSON: Yeah. Absolutely.</p> <p>6 MR. LESTER: Sure. Let's go off the</p> <p>7 record for one minute.</p> <p>8 THE VIDEOGRAPHER: The time is 2:01, and</p> <p>9 we're going off the record. Stand by.</p> <p>10 (A recess was taken.)</p> <p>11 THE VIDEOGRAPHER: The time is 2:02, and</p> <p>12 we are back on the record.</p> <p>13 Q. (By Mr. Thompson) Mr. Spencer, I'm just</p> <p>14 trying to clean up some of the things, make sure we</p> <p>15 cover the topics that you're designated for.</p> <p>16 Topic No. 32 was "A person or persons</p> <p>17 knowledgeable regarding your policies or procedures</p> <p>18 with respect to investigation and determination of</p> <p>19 preventable or nonpreventable accidents and</p> <p>20 collisions." Do you recall that?</p> <p>21 A. Yes.</p> <p>22 Q. And we talked a little bit about that.</p> <p>23 And my understanding is there's no formal policy at</p> <p>24 Norfolk or NIM in conducting a preventability</p> <p>25 analysis; correct?</p>

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<p style="text-align: right;">86</p> <p>1 A. To the best of my knowledge. 2 Q. Let's go to 51, 52, and 53. Which is 3 page 8 of Exhibit 1. "Person or persons 4 knowledgeable regarding all agents, servants, or 5 employees, attorneys, claims adjusters, experts, or 6 other persons who were present at the scene of the 7 accident at issue within seven days of the accident, 8 including the date and time they were present." I 9 think we've covered this implicitly. No one was 10 sent to the accident scene; right? 11 A. Correct. 12 Q. So we obviously know that Mr. Ajello and 13 Mr. Stoneman were at the accident scene. 14 Mr. Stoneman's employer was at the accident scene, 15 and the police were at the accident scene, but other 16 than that, you're not aware of any persons who were 17 there; fair? 18 MR. LESTER: Object to the form, misstates 19 the evidence. 20 Joe, you can answer. 21 A. I don't know of anyone else that was at 22 the accident scene myself. 23 Q. (By Mr. Thompson) 52, "Person or persons 24 knowledgeable regarding the present custodian of all 25 photographs of the scene taken within 14 days of the</p>	<p style="text-align: right;">88</p> <p>1 the truck in its damaged condition have been 2 produced; right? 3 MR. LESTER: Every photo that I'm aware 4 of. And that -- NIM looked for photos. We haven't 5 found any others than what's been produced. 6 Q. (By Mr. Thompson) 64, "A person or 7 persons knowledgeable regarding all statements you 8 have from any witness to the collision." Are you 9 aware of any witnesses to the collision other than 10 Mr. Stoneman and Mr. Ajello? 11 A. I am not. 12 Q. And 71 I think we've already covered. 13 MR. THOMPSON: So, Mr. Spencer, I don't 14 have any further questions of you at this time. 15 MR. LESTER: I just have one quick one, I 16 think. One quick area. 17 EXAMINATION 18 BY MR. LESTER: 19 Q. Do you recall having the testimony about 20 whether or not you or Charlie or Jim obtained 21 PeopleNet data in evaluating this accident? 22 A. I do. 23 Q. I'm just going to screen share what has 24 been -- what we Bates labeled as Defendants 734. 25 Can you tell me what this document is?</p>
<p style="text-align: right;">87</p> <p>1 accident." Do you know who has any pictures taken 2 within 14 days? 3 A. I have no knowledge at all. 4 MR. THOMPSON: So, Michael, I assume that 5 all such pictures have been produced; right? 6 MR. LESTER: Yes. That's -- we have 7 looked for additional photographs. None exist that 8 we have found. 9 Q. (By Mr. Thompson) And 53 is kind of 10 duplicative, if you can believe that. 11 58. This is now page 8 of Exhibit 1. 12 MR. LESTER: I actually misspoke -- I 13 think -- well, you can ask for Joe's answer, but I 14 think Rich will also be talking about 58. 15 MR. THOMPSON: Okay. 16 Q. (By Mr. Thompson) On 58, "A person or 17 persons knowledgeable regarding all written test 18 certificates for James J. Ajello." Have -- are you 19 aware of any written test certificates that we have 20 not covered? 21 A. No. 22 MR. THOMPSON: 62, probably just quicker 23 to ask you, Michael. All -- all such photos -- 24 MR. LESTER: Same. Yep. 25 MR. THOMPSON: -- in their damage -- in --</p>	<p style="text-align: right;">89</p> <p>1 A. Try to blow it up a little here. 2 That is -- 3 Q. I might be able to. 4 Can you tell me what that document is? 5 A. That is a -- it's an eLog violation 6 report, like it says up top. It's from PeopleNet 7 for Jim Ajello, 7/16/2018, that's Charlie's 8 handwriting that lists "Could not do a" -- does it 9 say "posttrip"? 10 Q. Yeah. 11 A. Yes. 12 Q. Can you read that? 13 A. "No posttrip inspections" was the 14 violation on that day. 15 Q. Yeah. This is part of the accident 16 investigation file; correct? 17 A. Correct. 18 Q. Would you agree with me that this is 19 something that -- a piece of information that NIM 20 Transportation had while it was investigating the 21 accident? 22 A. Yes. 23 Q. And would it -- would you agree with me 24 that it implies that a driver supervisor at the very 25 least looked at Jim Ajello's driver's logs on the</p>

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<p style="text-align: right;">90</p> <p>1 day of the accident?</p> <p>2 A. He would have had to, yes.</p> <p>3 MR. THOMPSON: I would object, call --</p> <p>4 calls for speculation. Lacks foundation.</p> <p>5 Q. (By Mr. Lester) Let me ask this: What --</p> <p>6 have you seen a form like this before?</p> <p>7 A. I have.</p> <p>8 Q. How does a form like this get generated</p> <p>9 and put into a file?</p> <p>10 A. From PeopleNet. From the drive -- yeah.</p> <p>11 From PeopleNet, the driver supervisor would have</p> <p>12 gone into the logs to -- or into PeopleNet at least</p> <p>13 for sure to -- to pull the form.</p> <p>14 Q. Okay. Could Mr. Cheek have pulled this</p> <p>15 form without looking at the PeopleNet information</p> <p>16 and data from the day of the accident?</p> <p>17 A. I don't think so. I think Rich would know</p> <p>18 for sure, but I -- I think you are correct.</p> <p>19 Q. In an accident investigation standpoint,</p> <p>20 did you have any policies or procedures regarding</p> <p>21 checking logs?</p> <p>22 A. Not a policy in writing that I know of,</p> <p>23 no.</p> <p>24 Q. What about just practices or procedures?</p> <p>25 A. Usually, yes.</p>	<p style="text-align: right;">92</p> <p>1 MR. LESTER: Yeah, if you marked the</p> <p>2 accident investigation file, it's in -- it's in what</p> <p>3 we've produced under that heading.</p> <p>4 MR. THOMPSON: Yeah, your 734 -- I'm going</p> <p>5 to go back and let me -- we got to figure this out.</p> <p>6 Your 734 is part of the manual.</p> <p>7 MR. LESTER: So I have -- let me see --</p> <p>8 maybe -- for me, accident investigation starts on</p> <p>9 Defendants 700, and there's -- it's -- all the</p> <p>10 things that you marked from the emails have been</p> <p>11 produced. It's in between that and insurance in our</p> <p>12 original Bates production. Stop my share.</p> <p>13 MR. THOMPSON: The accident investigation</p> <p>14 begins with Bates stamped --</p> <p>15 MR. LESTER: Let's just go off the record</p> <p>16 while we -- while we work it out.</p> <p>17 THE VIDEOGRAPHER: Time is 2:12, and we're</p> <p>18 going off the record. Stand by.</p> <p>19 (Discussion off the record.)</p> <p>20 (A recess was taken.)</p> <p>21 THE VIDEOGRAPHER: Time is 2:13, and we're</p> <p>22 back on the record.</p> <p>23 MR. LESTER: Can you pull up</p> <p>24 Defendants 716 for us so that Joe can see it?</p> <p>25 Q. (By Mr. Lester) All right. Mr. Spencer,</p>
<p style="text-align: right;">91</p> <p>1 Q. All right. Would you agree, as the</p> <p>2 corporate rep for NIM Transportation, LLC, that</p> <p>3 the -- that the PeopleNet log from the day of the</p> <p>4 accident was reviewed as part of this accident</p> <p>5 investigation?</p> <p>6 MR. THOMPSON: Objection. Leading. Lacks</p> <p>7 foundation.</p> <p>8 A. Is it okay to answer?</p> <p>9 Q. (By Mr. Lester) Yes, you can.</p> <p>10 A. I would believe so.</p> <p>11 Q. Okay. And this -- this form is part of</p> <p>12 the accident investigation file; correct?</p> <p>13 A. I don't know --</p> <p>14 MR. THOMPSON: Objection. Lack of</p> <p>15 foundation.</p> <p>16 What was the Bates stamp on that, Michael?</p> <p>17 MR. LESTER: That is 734.</p> <p>18 THE REPORTER: Is that an exhibit that I'm</p> <p>19 going to need to attach?</p> <p>20 MR. LESTER: Well, I have no idea. James,</p> <p>21 is 734 in any of the exhibits that you've already</p> <p>22 put on?</p> <p>23 MR. THOMPSON: It -- well, I'm going to</p> <p>24 confirm that. See, 734 -- 737, just trying to find</p> <p>25 it here, sorry.</p>	<p style="text-align: right;">93</p> <p>1 I just asked you a number of questions about a</p> <p>2 document titled "eDriver Log Violation Report,</p> <p>3 Driver Detail." Do you see that document in front</p> <p>4 of you?</p> <p>5 A. Yes, sir.</p> <p>6 Q. I was using an old, outdated Bates stamp.</p> <p>7 It's correctly labeled Defendants 716. Do you see</p> <p>8 that?</p> <p>9 A. Yes, sir.</p> <p>10 Q. All right. All of the questions I asked</p> <p>11 you about the previous -- about the eDriver log</p> <p>12 violation report don't change regardless of what</p> <p>13 page number it is; correct?</p> <p>14 A. That is correct.</p> <p>15 Q. Do you know -- I don't know if this is</p> <p>16 going to be a "you" or "Rich" question. If you pull</p> <p>17 something like this, would it show all violations</p> <p>18 over an entire day?</p> <p>19 A. I don't know that for sure. I would ask</p> <p>20 Rich.</p> <p>21 Q. All right. I'll ask Rich about it.</p> <p>22 MR. LESTER: I don't have any further</p> <p>23 questions.</p> <p>24 MR. THOMPSON: I just have a few follow-up</p> <p>25 on that. If you could put that exhibit back up. So</p>

<p style="text-align: right;">94</p> <p>1 if you can blow up the bottom of the exhibit. 2 EXAMINATION 3 BY MR. THOMPSON: 4 Q. It says "Note: Report data availability 5 is limited to the eDriver log data retention 6 preference set in PFM." Do you know what that 7 means? 8 A. I don't. 9 Q. And it looks like the report was generated 10 for Norfolk Iron & Metal Company on July 22nd of 11 2018 at 11:01 Greenwich Mountain Time, I guess. Do 12 you see that? 13 A. I do. That's -- that's what I would take 14 it to mean also. 15 Q. So it looks like it -- it -- have you -- 16 have you ever interacted with the people at 17 PeopleNet? 18 MR. LESTER: James, you're really quiet. 19 Are you -- 20 MR. THOMPSON: No. I'm not -- can you 21 hear me now? 22 (Discussion off the record.) 23 Q. (By Mr. Thompson) Have you ever had 24 interaction with PeopleNet directly? 25 A. I'm -- I'm thinking. No.</p>	<p style="text-align: right;">96</p> <p>1 James, anything else? 2 MR. THOMPSON: Nope. Let's take ten, be 3 back at it. 4 MR. LESTER: We will read and sign. 5 THE VIDEOGRAPHER: Time is 2:17, and we're 6 going off the record. Stand by. 7 (The deposition concluded at 2:17 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">95</p> <p>1 Q. Okay. Is interaction like this something 2 that would have been done through corporate? 3 A. No. This would have been the driver 4 supervisor. 5 Q. Okay. 6 MR. THOMPSON: No further questions. 7 MR. LESTER: Just real quick so -- to 8 clean it up. 9 EXAMINATION 10 BY MR. LESTER: 11 Q. Joe, is this something that you could get 12 on and run from your own computers, this report, or 13 is that a "Rich" question? 14 A. That's a "Rich" question. My answer is -- 15 would be I think so. At the driver supervisor level 16 at the branch. 17 Q. As far as you know, it's not something 18 that you actually have to reach out and communicate 19 and contact PeopleNet to obtain; right? 20 A. I don't think so. 21 Q. Okay. Better -- question better asked for 22 Rich? 23 A. Yes. 24 Q. Okay. 25 MR. LESTER: Then I'm all done.</p>	<p style="text-align: right;">97</p> <p>1 CERTIFICATE OF REPORTER 2 3 I, Ellen L. Stock, a Certified Court 4 Reporter of the State of Missouri, do hereby 5 certify: 6 That prior to being examined, the witness 7 was first duly sworn; 8 That said testimony was reported by me at 9 the time and place hereinbefore stated and was 10 thereafter reduced to typewriting under my 11 direction; 12 That the foregoing transcript is a true 13 record of the testimony given by said witness; 14 That I am not a relative or employee or 15 attorney or counsel of any of the parties or a 16 relative or employee of such attorney or counsel or 17 financially interested in the action. 18 Witness my hand and seal this 22nd day of 19 November, 2021. 20 21 22 23 Ellen L. Stock 24 Missouri Supreme Court 25 Certified Court Reporter</p>

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<p>98</p> <p>1 ERRATA SHEET</p> <p>2 RE: Christopher W. Stoneman v. Norfolk Iron & Metal</p> <p>3 and James J. Ajello</p> <p>4 PG/LN Correction and Reason for Change</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Joseph W. Spencer</p> <p>25 ELS</p>	<p>99</p> <p>1 SIGNATURE PAGE</p> <p>2 RE: Christopher W. Stoneman v. Norfolk Iron & Metal</p> <p>3 and James J. Ajello</p> <p>4</p> <p>5 ____ I certify that I have read my testimony and</p> <p>6 request that NO changes be made.</p> <p>7</p> <p>8 ____ I certify that I have read my testimony and</p> <p>9 request that the above changes be made.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Joseph W. Spencer</p> <p>15</p> <p>16 Subscribed and sworn to before me this</p> <p>17 ____ day of _____, 20 ____</p> <p>18</p> <p>19</p> <p>20</p> <p>21 Notary Public</p> <p>22 State of _____</p> <p>23 County of _____</p> <p>24 My commission expires _____</p> <p>25 ELS</p>
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